

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : PART 47

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK

5 -against-

Ind. No. 1050N/15

6 JURY TRIAL

7 RAY ROSS,

8 DEFENDANT.
9 -----X

10 Mineola, New York
11 February 23, 2016

12 B E F O R E: HON. TERENCE P. MURPHY
13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (Same as previously noted)

16
17
18 Kathi A. Fedden
19 Official Court Reporter

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22 THE CLERK: Continued case on trial, People
23 versus Ray Ross. The jury is not present. All parties
24 are present.

25 Are the People ready at this time?

Kathi A. Fedden, Sr. Court Reporter

1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Defense ready?

3 MR. ZERNER: We are, thank you.

4 THE COURT: Okay. Mr. Zerner, do you have any
5 additional witnesses for today?

6 MR. ZERNER: No, your Honor.

7 THE COURT: So you are going to rest?

8 MR. ZERNER: Yes, your Honor.

9 THE COURT: We're missing one juror, so it
10 will be a few minutes, but with regard then to closing
11 statements, both counsel are prepared to sum up?

12 MR. PERRI: Yes, your Honor.

13 MR. ZERNER: Of course, your Honor.

14 THE COURT: And, Mr. Perri, how long do you
15 anticipate your summation to be?

16 MR. PERRI: I believe I would use the hour,
17 your Honor.

18 THE COURT: I didn't give you an hour, but you
19 say an hour.

20 MR. PERRI: I believe so, your Honor. That
21 was what we were told. I apologize.

22 THE COURT: Mr. Zerner.

23 MR. ZERNER: I won't be anywhere near 60
24 minutes, your Honor.

25 THE COURT: What I would like to do is have

1 the summations, charge and get the jury into
2 deliberations today. So I have a calendar matter that I
3 think is ready to go. I'll handle that and then
4 hopefully the jury will be here in full and we'll go on
5 the record and, Mr. Zerner, you can rest. We'll give
6 them a five-minute break for you to make your motions
7 and then we'll get right into summations. I'll give
8 them my pre-summation charge and then you get into
9 summations.

10 We anticipate we'll charge this afternoon at
11 2:00. I don't think we'll get it in before the morning,
12 but I would like to get the summations done before
13 morning, okay.

14 MR. PERRI: Yes, your Honor.

15 MR. ZERNER: Yes, sir.

16 THE COURT: Anything for the record that we
17 need to put on?

18 MR. ZERNER: I believe I spoke yesterday to
19 Ms. Doddato about a missing witness charge with regards
20 to Mercedes Johnson, your Honor.

21 THE COURT: We'll deal with that right now.

22 With regard to the verdict sheet, I think both
23 counsel have approved of the verdict sheet that's been
24 presented.

25 MR. PERRI: Yes, your Honor.

1 THE COURT: Have you initialed a Court exhibit
2 copy?

3 MR. ZERNER: Your Honor, thank you. I have
4 had the opportunity to discuss that with my client and
5 we have approved of the verdict sheet, Judge.

6 THE COURT: Very good. That will be marked
7 Court exhibit next in order.

8 THE CLERK: Court Exhibit X so marked.

9 THE COURT: We've had a final charge
10 conference wherein my law secretary has gone over the
11 Court's charge with counsel and that's approved.

12 MR. PERRI: Yes, your Honor.

13 THE COURT: But for the one application that
14 defense is making; is that right, Mr. Zerner?

15 MR. ZERNER: But for, yes, your Honor.

16 THE COURT: And with regard to the missing
17 witness, what is that about?

18 MR. ZERNER: Your Honor, there was mention
19 several times about an individual by the name of
20 Mercedes Johnson. She's the daughter of Sarita Johnson,
21 the half sister of the complainant, Millinia Johnson in
22 this case. She is under the control of the prosecutor.
23 The prosecutor's witnesses did mention her. She was
24 mentioned several times by several different people.
25 She would be knowledgeable about a material issue in the

1 case, about these trips back and forth to Brooklyn. It
2 was discussed by people in both the prosecutor's case
3 and the defense case that she was on these trips back
4 and forth to Brooklyn. She likely could be expected to
5 provide non-cumulative testimony favorable to the
6 prosecutor.

7 This never happened. There has been no
8 explanation as to why she wasn't produced. She
9 certainly was not within my control and she's simply not
10 here.

11 THE COURT: Thank you, sir.

12 Mr. Perri.

13 MR. PERRI: Your Honor, as a preliminary
14 matter, defense counsel's application for a missing
15 witness charge is untimely. Under People v. Fields, 76
16 N.Y.2d 761, the Court of Appeals in 1990 stated that the
17 application must be made as soon as practicable and
18 before the People rest, they should be put on notice
19 defense counsel wishes to make such an application.

20 The Second Department has subsequently stated
21 repeatedly that when such as in People v. Gonzalez --
22 withdrawn. People v. Simmons, Second Department July 5,
23 1994, decision 92-06-071, that a request for a missing
24 witness charge not made until both sides completed their
25 cases is properly denied.

1 The People have not been given an opportunity
2 if the defense counsel felt Ms. Johnson was a missing
3 witness or a necessary witness or even a material
4 witness, to have an opportunity to call that witness.
5 Even if the Court were to entertain the application,
6 your Honor, Mercedes Johnson would be expected to give
7 cumulative testimony to all the testimony that has
8 already been put forth at this trial; that she was
9 possibly on some of these trips but not on all of them.
10 She was not alone with the defendant and Millinia
11 Johnson. That all the witnesses have testified that
12 there were many incidents where the defendant did have
13 access and opportunity to be alone with Millinia Johnson
14 on the way home from Brooklyn and 301 Coventry Road.
15 The defendant has conceded as much.

16 There is no reason that, therefore, Mercedes
17 Johnson's testimony would not be cumulative and the
18 People were not properly put on notice for such a
19 charge, your Honor.

20 THE COURT: Defense application is denied.

21 Mr. Zerner, in an effort not to have to bring
22 the jury in and then excuse them five minutes later once
23 you announce that the defense has rested, do you wish to
24 put on your end of case motions now?

25 MR. ZERNER: Sure, your Honor, I'll try to be

1 as efficient as possible. I think I've shown that
2 throughout the trial. I'm happy to do that right now,
3 your Honor. I do anticipating resting. Of course, I
4 will do that in front of the jury.

5 As you are instructing, I will make a motion
6 for you to dismiss all charges in this case. I know you
7 have reserved decision when I made this motion at the
8 conclusion of the People's case. I think it's clear
9 that there is reasonable doubt as to whether any of
10 these things ever took place. The indictment, itself is
11 unbelievably vague and has left the defense in the
12 position of having to defend a period of time that
13 encompasses about 600 days of this indictment, your
14 Honor.

15 Furthermore, I believe the prosecutor doesn't
16 understand what the word alone means. He constantly
17 talks about these people weren't alone together and I
18 think you have heard credible testimony from several
19 defense witnesses that put doubt into anybody's mind
20 about what the situation was between the parties
21 involved in this case and I make a motion for you to
22 dismiss each and every one of these charges in the
23 Indictment 1050N of 2015.

24 THE COURT: Mr. Perri, you want to be heard?

25 MR. PERRI: Yes, your Honor, just briefly.

1 The standard is not whether or not there is any
2 reasonable doubt to the defendant's guilt. That is a
3 matter reserved for the jury. But that a reasonable
4 jury could conclude that the defendant is guilty of
5 these crimes.

6 The People put forth a prima facie case with
7 regard to each and every element charged against the
8 defendant. The defense case has not changed or called
9 into serious question or jeopardy the People's evidence
10 with regard to this case.

11 In the light most favorable to the People, the
12 evidence the People have presented illustrates the
13 defendant's guilt and that defense counsel's arguments
14 against the statute, itself which allows for a
15 prosecution over this time period with just simply two
16 or more incidents, one of oral sexual contact, along
17 with two incidents of sexual contact in total over three
18 or more months does not call into question at this time
19 on this motion the defendant's -- that does not call
20 into question that this case should not be presented to
21 the jury for their consideration.

22 With respect to your Honor reserving decision
23 earlier to the previous motion by defense counsel,
24 clearly in the record of Sarita Johnson's testimony she
25 testified to her daughter's date of birth, clearly

1 providing evidence that the jury may consider that
2 Millinia Johnson was 12-years-old at the commencement of
3 the defendant's criminal conduct. Thank you, your
4 Honor.

5 THE COURT: The decision is reserved. We
6 stand in adjournment until the jury arrives.

7 (A recess was taken.)

8 THE CLERK: Continued case on trial, People v.
9 Ray Ross. The jury is not present. All parties are
10 present, Judge.

11 Are the People ready?

12 MR. PERRI: Yes, your Honor.

13 THE CLERK: Defense ready?

14 MR. ZERNER: We are, thank you.

15 THE COURT: Very good. I believe the jury is
16 here, Sergeant?

17 THE SERGEANT: They are, Judge.

18 THE COURT: We'll take them when they're
19 ready.

20 COURT OFFICER: Jury entering.

21 (Whereupon, the jury entered the courtroom.)

22 THE CLERK: Let the record reflect the
23 presence of the jury. All parties are present.

24 Again, are the People ready?

25 MR. PERRI: Yes, your Honor.

1 THE CLERK: Is the defense ready?

2 MR. ZERNER: We are, thank you.

3 THE COURT: Good morning, ladies and gentlemen
4 of the jury.

5 Mr. Zerner, do you have any further witnesses?

6 MR. ZERNER: No, your Honor, the defense
7 rests.

8 THE COURT: Very good. Thank you, sir.

9 Ladies and gentlemen, you have just heard
10 Mr. Zerner indicate that the defense has rested. The
11 People earlier rested. That means the testimony has
12 concluded. Therefore, we now move to the next stage of
13 the trial where you will hear the summations of counsel.
14 So, I have some instructions for you in that regard.
15 They're very short, but I ask you to listen.

16 Members of the jury, you will now hear the
17 summations of the lawyers. Following the summations I
18 will instruct you on the law and then you will begin
19 your deliberations.

20 Under our law, the defense counsel must sum up
21 first and the prosecutor then follows. The lawyers may
22 not speak to you after that.

23 Summations provide each lawyer an opportunity
24 to review the evidence and submit for your consideration
25 the facts, inferences and conclusions that they contend

1 may properly be drawn from the evidence.

2 If you find that a lawyer has accurately
3 summarized and analyzed the evidence and if you find
4 that the inferences and conclusions the lawyer asked you
5 to draw from that evidence are reasonable, logical and
6 consistent with the evidence, then you may adopt those
7 inferences and conclusions.

8 Bear in mind the following points:

9 First, you are the finders of fact and it is
10 for you and you alone to determine the facts from the
11 evidence that you find to be truthful and accurate.
12 Thus, you should remember that whatever the lawyers say
13 and however they say it, it's simply argument submitted
14 for your consideration. It's not evidence.

15 Second, remember that the lawyers are not
16 witnesses in this case. So if a lawyer asserts as fact
17 something that is not based on the evidence, you must
18 disregard it. Remember, nothing the lawyers say at any
19 time is evidence, so nothing the lawyers say in their
20 summations is evidence. You have heard the evidence and
21 must decide this case on the evidence as you find it and
22 the law as I explain it.

23 Third, during the summations one lawyer's
24 recollection of the evidence may, in good faith, differ
25 from the recollection of the other lawyer or from your

1 own recollection. And the lawyers will undoubtedly
2 differ with each other on the conclusions to be drawn
3 from the evidence. It is your own recollection,
4 understanding and evaluation of the evidence that
5 controls, regardless of what the lawyers have said or
6 will say about the evidence. You and you alone are the
7 judges of the facts in this case.

8 If, during your deliberations you need to have
9 your recollection of the testimony refreshed, you may
10 have all or any portion of the testimony read back to
11 you.

12 Fourth, remember, under our law, I am
13 responsible for explaining the law, not the lawyers. If
14 you think there is any difference between what the
15 lawyers may have said and what I say the law is, your
16 sworn duty as jurors is to follow my instructions on the
17 law as you promised me that you would.

18 Finally, if during the summations I sustain an
19 objection to a comment of a lawyer, that comment will be
20 stricken from the record and you must disregard it as if
21 it was never said. If I overrule an objection, the
22 comment will stand. Remember, it's simply comment and
23 not evidence.

24 Whether I sustain or overrule an objection or
25 on my own indicate that a comment must be disregarded,

1 my ruling only indicates that the comment does or does
2 not violate one of the rules of law set down for lawyers
3 to follow during summations. It is not an attempt to
4 indicate that I have an opinion on what is said or of
5 the facts of the case or of whether the defendant is
6 guilty or not guilty.

7 Remember, under our law, you and you alone
8 judge what facts, if any, are proven and whether the
9 defendant is guilty or not guilty. It's not me, nor the
10 lawyers that make those judgments.

11 We now turn to summations.

12 Mr. Zerner.

13 MR. ZERNER: Thank you, your Honor.

14 THE COURT: You're welcome, sir.

15 MR. ZERNER: Ray Ross did not sexually molest,
16 sexually abuse, conduct any type of sexual acts against
17 his niece, Patty Johnson. It simply didn't happen.

18 You have all heard the testimony of all of
19 these different witnesses over these last ten days and
20 your recollection and your opinion about what was said,
21 who it was said by and why it was said will rule. The
22 judge just reminded you of that and you are going to
23 hear that again and again.

24 You folks have done a wonderful job of being
25 attentive. I have watched you and you have watched me

1 and I think all of us have spent every bit of our energy
2 involved with this case. But you know what, ultimately
3 none of us were in a truck or in a room with Millinia
4 Johnson and Ray Ross.

5 You have heard from 12 different witnesses
6 here. Ten of them told you they don't know anything
7 about anything, all right. Two of them, Patty Johnson,
8 Millinia Johnson, and Ray Ross, let's look at what they
9 said and why they said it.

10 Now, you watched the witnesses. You evaluate
11 People's credibility all day every day, even when you
12 don't realize you are doing it, you are doing it. You
13 are looking at whether people are looking you in the
14 eye. You are wondering whether they are making an
15 evaluation of what you are saying and how you are saying
16 it.

17 Now, Patty Johnson was brought in after her
18 mother, Sarita Johnson. And you heard multiple people
19 testify about how many times they spoke about this
20 so-called sexual conduct. You heard who they spoke to
21 and how they said what they said. So now let's break
22 this down.

23 In the summer of 2014 it's crystal clear that
24 there is a ton of tension in the home that's being
25 discussed at 301 Coventry Road North in West Hempstead.

1 There is no debate about that, whether there were 18,
2 19, 20 people living in this four bedroom split ranch
3 house. Picture the house. Picture the chaos in this
4 house. And now you have seen the personalities of
5 several of the people who live there, all right.

6 You saw Sarita Johnson and you saw Tara
7 Johnson. They're sisters. They're women in their early
8 fifties. They both testified in front of you folks.
9 You saw what -- you heard what they said and you saw how
10 they said it. Now picture them in the summer of 2014.
11 You have this extended family living in this house where
12 both of those women grew up. It's not just a house that
13 these two adult women are living with their children and
14 then also their nieces and nephews, right. This is the
15 house they grew up in. And now here we are 40, 45 years
16 later and they're living there.

17 And think about what you heard about how
18 they're living there. There is no debate about who was
19 taking care of this house. Sarita Johnson told you she
20 didn't know how the bills got paid and she didn't pay
21 the bills. Think about the common sense that you all
22 have with you and the Judge is going to remind you we
23 want you to apply your common sense here. So think
24 about this. Think about your own experiences, your own
25 home, your own family and think about the resentment

1 that builds up between parties in this type of a
2 situation.

3 So you have a situation where Ray Ross was
4 paying for this home, along with his long time
5 girlfriend Tara Johnson and Ray Ross' contributing both
6 financially and emotionally in a very positive way to
7 multiple children that are living there. You have heard
8 that he went to parent-teacher conferences. You heard
9 that he would provide the kids with lunch money. You
10 heard that he would take the kids shopping for school
11 clothes. But not just him. And again, think about the
12 family tree of this. I was never good at making family
13 trees and I think if I tried to make a family tree here,
14 the branches would go in such angles and such directions
15 it wouldn't look anything like anything we have ever
16 seen growing, in nature anyway, all right.

17 So you have Ray Ross who has three children
18 and you heard from these children. You heard their
19 opinion of their father. You heard about their
20 childhood. And you heard from Ray Ross' ex-wife, Paula
21 Ross. So now think about that. And I hope again, when
22 we apply our common sense to evaluating anything, at
23 some point we put ourselves in that person's position.
24 And sometimes it's easy. Like I would like to imagine
25 that I'm Matt Harvey of the New York Mets and what it

1 would be like to be young and a star and be playing for
2 my favorite team. That's easy. But let's think about
3 being Paula Ross.

4 Paula Ross is a woman who is divorced from the
5 father of her children, right. She works hard. She's
6 been working at the Macy's at Green Acres for years and
7 years and she also does hair. Now my hair is not that
8 important and not that crucial and for nine dollars it
9 keeps getting shorter and greater, but I think hair is
10 very important, especially to women and especially to
11 young women.

12 So now here's Paula Ross who is voluntarily
13 helping her ex-husband's long time girlfriend's niece.
14 On a regular basis she's doing this girl's hair. And
15 that's an extensive thing that's being done. You heard
16 some discussion of some of the, I guess, machine would
17 be the wrong word, but devices and various curlers and
18 hot irons and different things that sometimes it was
19 being done at her home in Brooklyn and sometimes she
20 would bring all of this equipment with her to West
21 Hempstead. And why was she doing this? I think she was
22 doing this out of the goodness of her heart. I think
23 this is a nice woman who is simply going out of her way
24 for her extended family. Not even for her extended
25 family, technically, if you think about it, for her

1 ex-husband's extended family. That's a nice lady.

2 So, she came here and she talked to you about
3 what was going on in that home in West Hempstead and
4 picture it, you have heard testimony about the chaos in
5 that home, about the filth in that home and then you
6 heard about what sounded to me basically like an oasis
7 in that home. That oasis was the small bedroom that was
8 shared by Tara Johnson and Ray Ross.

9 Now, that bedroom had a television in it and
10 the television worked in that bedroom. Now, I think we
11 can all use our common sense, if we didn't have TV, we
12 would miss it. Maybe some of us talk about no, I always
13 read and I watch PBS for a half hour a week. That's not
14 me. I watch more TV than I should and sometimes it's
15 intelligent, important TV and other times it's brain
16 candy, whatever you want to call it.

17 But you heard testimony about the TV in Ray
18 and Tara's room. It's the only TV that is working in
19 there. The testimony was that 19 people were living in
20 that house. There were plenty of times when Tara and
21 Ray were home that people were coming and going in that
22 room to watch TV. Do you really think that there were
23 multiple occasions when nobody was in the house and
24 nobody was in that room and nobody was swinging by that
25 room and saw something going on? Because again, think

1 about the testimony you have heard, but think about the
2 testimony you have not heard. Ask yourselves and,
3 again, placing yourself in anybody's position, and
4 anybody can accuse anybody of anything. Anybody can
5 stand up on the witness stand and say something.

6 Now, what you don't have is, you don't have
7 any DNA. This truck that keeps being talked about was
8 never seized, never inspected, never sprayed down with
9 any of these devices you see on CSI and Law & Order to
10 show anything was going on. From the prosecution's
11 case, it sounds like there would be ejaculate all over
12 this truck. It's disgusting to say. I don't want to
13 talk about this with you folks, but this is why we're
14 here.

15 We're here because there is this allegation
16 against my client that on a regular basis in the back of
17 his truck he's masturbating while touching his niece's
18 vagina, breasts, anus. We don't have any evidence of
19 that. And then you are talking about these parking lots
20 where this supposedly happened and you have these photos
21 in evidence and please, look at the evidence. Look at
22 it. The Judge is going to tell you all that's available
23 for you, all right.

24 I tried a lot of cases and oftentimes the
25 first thing that a jury asks for is let us see the

1 evidence. And I watched each and every one of you when
2 Mr. Perri published, showed you the documents and showed
3 you the photos and showed you the phone records. Look
4 at them. What you don't have in any of these parking
5 lots is any type of evidence of anything.

6 Now, you heard Detective Toussaint testify.
7 Let's talk about Detective Toussaint. Detective
8 Toussaint has been on the job a number of years. He
9 told you well, there are some procedures when talking to
10 a young lady, but I don't know if my commander told me
11 I'm supposed to do this and so I went out and you heard
12 about the geography of the area and all of you folks are
13 Nassau County residents, you know how far this is from
14 Dutch Broadway, where the precinct is, to West Hempstead
15 where this house is.

16 So you heard testimony that Detective
17 Toussaint went to the home. Again, think about the time
18 line. Apparently there is an allegation in August and
19 then there is an issue in October when Ray Ross moves
20 out of the house and December 10th is when Detective
21 Toussaint goes to the home, right.

22 Now, he goes to the home, but he doesn't go in
23 the home. He never steps foot in the house at 301
24 Coventry Road North. Sarita Johnson is waiting at the
25 door, sees him and then hustles outside with her

1 daughter. Now the three of them are in the car.

2 Again, put yourself in Patty Johnson's
3 position. I'm sure Mr. Perri is going to instruct you
4 to do that. She's in a police car with her mother and a
5 male detective and her mother telling her you can all
6 fill in the blank.

7 So the three of them talked for a while but
8 not in front of the house, not in the house, not in
9 front of the house, not in the driveway, not in front of
10 the address, they drive a few blocks away. That hasn't
11 been explained to me why they drive a few blocks away.
12 You're in a police car. You can get wherever you have
13 to go pretty fast. Whether you want to go back to the
14 precinct, whether you want to go to Starbucks, whether
15 you want to go to any well lit place, especially
16 including a police precinct where there might be a
17 female police officer or detective, have a conversation
18 about this, right.

19 Now, I asked the detective are there cameras
20 at either of these parking lots. He said I didn't look
21 into it. You didn't look into it? You're investigating
22 this case. You didn't look into it? Why didn't you
23 look into it, Detective? Well, ten years ago I was
24 there and when I was there ten years ago I knew there
25 weren't cameras there.

1 Now I'm no expert on computers, cameras or
2 phones or iPads or any of these things, but I can tell
3 you this, I'm pretty sure cameras have gotten smaller
4 and easier to place to hide and install and use in the
5 ten years since Detective Toussaint was talking about
6 knowing about something. Why didn't he look into this?

7 I'll tell you why he didn't look into this.
8 We talked about this in jury selection. It's garbage
9 in, garbage out. This detective has --

10 MR. PERRI: Objection.

11 THE COURT: Hold it, Mr. Zerner.

12 Objection overruled.

13 MR. ZERNER: Detective Toussaint has this hot
14 potato put on his desk and the commander says go deal
15 with this. So he goes and he does what he has to do to
16 get this off of his desk. So this woman, Sarita Johnson
17 says that this happened and she's, you know, basically
18 putting words into her child's mouth and her child says
19 X, Y and Z and the detective then goes back to the
20 precinct, types this up and then goes back to the house
21 and, again, doesn't enter the house. Doesn't even talk
22 about that it was odd to him that he wasn't allowed
23 entry into the house. This supposed monster isn't
24 living there. Why not go into the house? Why not look
25 around? Why not get a flavor for what's going on? For

1 who's saying this to you.

2 So the detective takes this information and
3 now it's off of his desk.

4 Now, he told you he doesn't know if anything
5 happened, how it happened, where it happened. The only
6 evidence he has of that is a girl in front of her mother
7 saying that this happened.

8 Now, let's look at another one of the
9 prosecution's witnesses. He calls a gentleman in from
10 Kansas that's working for the cell phone company and
11 there are hundreds and hundreds of pages of texts and
12 phone records and everything else. Go ahead and look at
13 them. Take a look. You have those records. Think
14 about what's not in those records. And again, excuse my
15 using this language, there is no sexting, there is no
16 pictures of anybody's genitalia or anybody's private
17 parts. There is none of that.

18 The prosecutor wants you to say well, why are
19 all these texts going on? Who knows why people text as
20 much as they text? People text photos of the food they
21 just ate or about to eat or they prepared. Or they take
22 a picture of who knows. But there are no untoward
23 pictures, there are no sexting anything in any of these
24 records.

25 Now, what you do have is you have my client

1 saying I love you. Well, what does that mean? It means
2 different things to different people at different times.
3 My client never says anything about anything sexual, all
4 right. And again, think about the time line. So if you
5 are looking at records from August, September, October,
6 all right, now you heard testimony that Sarita Johnson,
7 who you saw, who you heard, who you evaluated, she told
8 Patty what's going to be and what's not going to be as
9 far as phones, as far as who she's going to, when they
10 are going to talk to them and everything else.

11 Why is Patty Johnson sleeping with this phone
12 under her pillow? She's sleeping with the phone under
13 the pillow because if there is a moment when she doesn't
14 have control over that phone, Sarita is going to take
15 this away from her. How do we know this? It happened
16 multiple times. Sarita Johnson didn't have a phone all
17 the time and she wasn't happy that her children, her
18 14-year-old daughter did.

19 Now Sarita Johnson might have been in a tough
20 position being that her sister and her sister's long
21 time boyfriend had better financial resources, but think
22 about how she expressed her appreciation for that.
23 Think about what she said and how she said it. Was she
24 thankful that her sister kept the lights on, kept the
25 heat on, kept food in the refrigerator or was she

1 jealous, was she petty, was she vindictive, nasty.
2 Think about that. Think about what she said and how she
3 said it.

4 Now you also had testimony from somebody who
5 was admitted as an expert, all right. Now I'm sure he's
6 an expert on certain things, but he's certainly no
7 expert on the People of the State of New York versus
8 this gentleman. He never met him. He never talked to
9 him. He admitted he never talked to Ray Ross. He never
10 talked to Patty Johnson. Never talked to anybody about
11 this case. So, in generalities, Josh Hanson was talking
12 to you about things that happened in the world, okay.

13 I can talk to you in generalities about how
14 the Cy Young Award is voted on and whether they should
15 change it or anything else. It has nothing to do with
16 this case. This is the prosecutor trying to prop up his
17 witnesses.

18 You heard Josh Hanson. He's advancing his
19 career. Fine. You heard him talk about he's never
20 published a paper, hasn't read most of the papers that
21 we talked about and, again, the prosecutor wants to use
22 these nasty words to make you feel badly about my
23 client, but you know what, my client is not guilty. The
24 judge told you he's not guilty.

25 MR. PERRI: Objection.

1 THE COURT: Ladies and gentlemen, please
2 disregard that in terms of the characterization of what
3 the Court said. I told you initially in my charges that
4 the defendant is presumed innocent and that it's the
5 People's burden to prove the charges against the
6 defendant.

7 Continue.

8 MR. ZERNER: And that's exactly what I was
9 going to say next is that there is a burden of proof
10 that the prosecutor has to lift and the prosecutor has
11 to prove. He has not done that.

12 Now, you heard the expert asked about
13 different categories of complainants and different
14 categories of complainant's family members. And you
15 heard me ask him do you ever see complainant's family
16 members with an agenda. He admitted he did. And he
17 admitted that sometimes somebody walks in with a child
18 and they have a reason to lie. They have a reason to
19 misrepresent. They have a reason to accuse somebody of
20 something. Think about that. Think about that.

21 From the beginning of the case you keep
22 hearing the name Ray Ross, Ray Ross, Ray Ross. It's an
23 interesting thing because one of the very first things
24 the judge asked you all when you came in for jury
25 selection was does anybody here know this person, this

1 person, this person, this person, Ray Ross. Had you
2 known Ray Ross, you wouldn't be able to end up on this
3 jury. But you keep hearing the name, hearing the name
4 and you sit here and you see him here all day every day
5 sitting next to me and I promised you at the beginning
6 of the case that Ray Ross would testify and Ray Ross did
7 testify.

8 Now again, think about it yourself. If you
9 were accused of something so awful, what would you do?
10 He, under oath, stood up in front of that chair and told
11 you he did not do this. He would not do this.

12 Is he a sophisticated man? No. He wouldn't
13 tell you he's sophisticated and I'm not telling you he's
14 sophisticated. Think to yourself, you saw different
15 testimony from different people. Does Ray Ross look
16 like somebody who had words put in his mouth or does Ray
17 Ross strike you as a genuine person?

18 Think about what the people who know him told
19 you about him, right. That he would, you know, take the
20 extended family to Coney Island, to the aquarium, to the
21 movies, to Red Lobsters, to other restaurants, to movies
22 and everything else. You have a flavor for who this
23 person is, not just from what people have been telling
24 you about him, but by observing him and by listening to
25 him. Compare and contrast that with Sarita Johnson.

1 Think about what you know about Sarita
2 Johnson. This is a woman who has had four children by
3 three different men. This is a woman who has not had a
4 steady job for the last 20 plus years. This is a woman
5 who has been living in squalor and doing nothing to try
6 to remedy that. Has she gone out and gotten a job? Has
7 she contributed to the household finances? Has she gone
8 to do anything to better herself?

9 Now you did hear from Patty Johnson's father.
10 This is a man that Sarita Johnson chose to have in her
11 life. You got to observe him.

12 Now, you also heard from -- that was Rafael
13 Mickens -- and you heard from his brother George, all
14 right. So you saw the man, warts and all. He spoke to
15 you about a very small issue, about a phone and he
16 answered every question, whether it was put by me or put
17 by the prosecutor. And, again, evaluate his
18 credibility. What do you think about George Mickens?

19 Now let's talk about the time line in the
20 case. The prosecutor will have you believe that my
21 client is this sexual deviant. When he saw his niece in
22 March 2013 at some talent show, a switch flipped and
23 that's what began this long time frame of abuse. There
24 is no evidence of that. He's trying to tell you that
25 well, it's all about the phones. It's all about the

1 phones. You can see that he disobeyed the mother of the
2 child and the phones show this.

3 Well, you heard testimony first from the
4 prosecutor about phone number one and phone number two.
5 Actually we found out there are four phones involved and
6 the phones he calls one and two are actually phones two
7 and three. So the first phone was given to this young
8 lady by her Uncle George Mickens.

9 Now again, think to yourself about your own
10 life, your own experience when you were a child, now
11 that you are an adult with extended families and
12 everything else. It's very nice of this uncle to
13 provide a phone to his niece, right? He doesn't seem
14 like a wealthy man and admitted to you that actually
15 during the course of the time when he provided the
16 phone, unfortunately, and perhaps embarrassingly, he was
17 no longer able to foot the bill. He was very honest
18 with you about that. That would embarrass me if all of
19 a sudden somebody called me and my phone didn't work or
20 if I went home and my television was off or the lights
21 didn't work.

22 But he told you I knew I couldn't do it. I
23 had two jobs. I lost one of them. I wasn't going to be
24 able to do it, but I didn't want my niece to be without
25 her phone, so I reached out and I looked to see if

1 somebody could pick up the slack and Ray Ross could.
2 This wasn't Ray Ross initiating some type of gift of a
3 phone in order to manipulate Patty Johnson. There is
4 nothing like that. It's not the story. Don't let
5 yourselves be led down that path by the prosecutor.
6 That's not the time line.

7 The situation was that George Mickens couldn't
8 afford the phone. Ray Ross started paying the phone.
9 Just one of another thing that he was paying for that he
10 truly didn't have to pay for.

11 You know, it's a funny thing. I have a friend
12 that if we're walking together in the city and somebody
13 says hey man, you have an extra dollar, my friend will
14 always walk away and turn to me. I say I don't have any
15 extra money. All the money I have is needed for me and
16 my wife and my kids, all right. Maybe that's a selfish
17 way to go about the world and maybe it's better off if
18 you do give. And who do you give to, right? Sometimes
19 you have charts. My accountant is always telling me
20 it's December, you can do this and if you have a
21 favorite charity, okay.

22 This man understands the maximum chart begins
23 at home. So this man could have kept the extra \$42 a
24 month in his pocket. He could have used that to buy
25 himself lunch or a thousand other things, but he bought

1 a phone for his niece. And he didn't buy it outright.
2 It wasn't his idea to buy the phone. This young lady
3 was going to have her phone turned off, so he was kind
4 enough to pick up the payments on that phone and that's
5 what he did.

6 Now again, what was Sarita Johnson's response
7 to that? Initially it was like fine, you want to pay
8 for it, go ahead and pay for it, just like you have been
9 paying for meals, back-to-school clothes, outings to
10 different amusement parks and this and that. And these
11 were not one-on-one outings.

12 Again, picture the house. Picture the
13 situation. You have heard testimony that generally on
14 Saturdays Ray would go from the house in West Hempstead
15 to Brooklyn. Why? To see his kids. He's a good
16 father. You heard from the kids. You heard from him.
17 He wanted to spend time with his kids. What was he
18 doing with them? Sometimes they would have a meal. Why
19 would they have a meal? Because we're all gonna have
20 meals today. So he would have a meal with his ex-wife,
21 his kids and sometimes the people he lived with would
22 want to come with him. He wasn't some kind of master
23 manipulator getting Tara to stay home so he can spend
24 time alone with his nieces.

25 Tara told you she works hard five, five and a

1 half days a week and Tara is not the biggest morning
2 person. Ray is a morning person. You know how we know
3 that? He's a sanitation guy. He wakes up early.

4 My first job was working at a country club
5 around the corner over here. I used to start working at
6 dawn. It became impossible to sleep past dawn.

7 So Ray Ross would get up and he would go to
8 Brooklyn and sometimes he would go with any combination,
9 including nobody from the house in West Hempstead to
10 Brooklyn.

11 Now, you didn't hear from Mercedes Johnson.
12 You did hear from Patty Johnson. Patty Johnson told you
13 that she wanted to go to Brooklyn. She would go to
14 Brooklyn. And that there was never a situation that she
15 said that there was a problem until October of 2014.

16 What happened in October of 2014? Her mother
17 caught her lying. Her mother caught her disobeying her.
18 Think about Sarita Johnson. Think about Sarita Johnson
19 catching you doing something you weren't supposed to do.

20 Now you're adults and you are strangers to
21 Sarita Johnson. Now think about Sarita Johnson is in a
22 position of authority above you. She's your mother.
23 How does that feel? Think about what's happened before
24 then. Sarita's taken away your phone and then let you
25 look around the house as if you just misplaced it. You

1 heard testimony about that. Think about that child.

2 Her mother's not going to open school night.
3 Her uncle is going. And if you want to break it down,
4 it's not technically her uncle, it's her aunt's
5 boyfriend. That's who is going to open school night.
6 That's who is going to parent-teacher conferences.

7 He didn't do anything wrong. He's doing
8 something right. Charity begins at home. That's what
9 this man is doing. He's helping people that need help
10 that are under the same roof, under the same four walls
11 as he's living with Tara Johnson.

12 During jury selection I asked you to keep an
13 open mind throughout and I know it was tough to do. I
14 know it was, but I know that you all assured us that you
15 would. You all took an oath that you would listen to
16 the entire case and we're almost done. It's almost in
17 your hands. Think to yourself about what I talked to
18 you about at the beginning, that I'm going to ask some
19 tough questions. That there might be some crying on the
20 stand. You are not going to hold it against me and,
21 more importantly, you are not going to hold it against
22 my client. And I thank you for not doing that, for not
23 holding any of this against anybody, because this is a
24 man who has been falsely accused of an awful, awful
25 crime. And all I have been doing has been defending.

1 Now, think to yourself about the two different
2 narratives that you heard. Is it reasonable to think
3 that Sarita Johnson put her daughter up to saying that
4 this happened? Is it reasonable to think that Patty
5 Johnson was afraid of her mother and did something to
6 get herself out of the cross hairs of her mother
7 punishing her when her mother caught her with this cell
8 phone that she knew she wasn't supposed to have? Think
9 about that. Everything after that is just that domino
10 being knocked over, all right.

11 This is what you heard about in October of
12 2014. Detective Toussaint doesn't know anything more
13 than that except what's being spoon fed to him in
14 December of 2014.

15 You heard from the Sprint representative. All
16 they're showing you is phone records. Look at the phone
17 records, see what's there and see what's not there.

18 And you heard from a quote, unquote "expert"
19 who doesn't know the people involved in this case. So
20 it all boils down to mother and child who are saying
21 something happened and think about why they are saying
22 it. Think about if it's reasonable.

23 Is it reasonable to think that this is the
24 reason this allegation was made, not because there is
25 any proof of it. Again, think about what you don't

1 have. You don't have any camera showing that Ray Ross
2 was in some parking lot alone with the complainant. You
3 don't have that because it never happened.

4 You don't have technicians talking about DNA
5 that was found inside of the truck, because it never
6 happened.

7 Now, think about the dysfunction in that
8 house. Think about what you would do if Sarita Johnson
9 was yelling and screaming at you. And again, think
10 about and if you are not sure or when you are talking,
11 your memory is different, ask for the minutes. Ask for
12 the transcript. Ask for anything you want, but
13 especially ask for the situation about what Patty did
14 when Sarita confronted her. How angry was your mother
15 is the question that I asked her. Think to yourself.

16 Now, Tara Johnson eloquently testified and,
17 again, think about her position. Think about what she
18 said. Think about how she said it and she talked about
19 tough love, right. This is a woman who has been dealing
20 with her sister since they were children, right. Think
21 about that dynamic of adult siblings in their fifties
22 still living together. Think about the two of them.

23 Tara Johnson has been working for HSBC and the
24 various banks it was before that, since May of 1989.
25 She gets up every morning, goes to work five or six days

1 a week and then comes home to the chaos, to the
2 disgustingness [sic] in her own home because this is
3 what her sister is fostering. This is what her sister
4 is allowing. This is what her sister is doing. Her
5 sister is not working, she's not contributing. She's
6 not cleaning, she's not cooking. She's not doing
7 anything. She's making a bad situation worse.

8 So Tara at some point decided you know what,
9 we've got to move out. And she told you that was in the
10 summer of 2014. She looked at it and she said why am I,
11 along with Ray, paying for 19 people? Financing 19
12 people. Think about that, 19 people. So she said
13 that's it. We've got to start looking for another
14 place.

15 So, they did look for another place and they
16 still are together. They have been together as a couple
17 throughout this entire ordeal and they live together now
18 in Valley Stream. She told you that it took a while.
19 She was picky. They found a place. And think about the
20 tough love that she decided that she wasn't going to put
21 oil in the oil tank at the house. She felt bad about
22 it. She talked to you about it and she had a smaller
23 kerosene heater and that heated up some small part of
24 the house. You can disagree about what you would do in
25 that situation or not, but think about how many years

1 led up to this. Just think about that. And think about
2 Tara Johnson's opinion about the whole thing. This is
3 her niece. This is her blood who is making this claim.
4 She doesn't believe it.

5 Now, you will look at the text messages and
6 there are some text messages in there about a clarinet
7 and there are some text messages in there about keeping
8 the phone on or not keeping the phone on and evaluate
9 it. This is the same tough love that we're talking
10 about here where Ray told you on the witness stand just
11 yesterday, he still hopes for the best for all of these
12 folks, including Patty. He knows what her mother has
13 done, what her mother hasn't done. And at some point he
14 said listen, if you are not going to talk to me, then
15 you know, you've got to return the clarinet and I'm not
16 paying for the phone anymore.

17 Is that an awful thing? Does that mean that
18 he molested her or did he pay for the phone for the
19 previous however long it was, 18 months, 24 months,
20 however long it was he was paying for that phone and he
21 said that's it, we're moving out and I'm not paying for
22 the phone anymore. And if your mother wants to keep the
23 phone, then your mother can pay for the phone.

24 We talked about phones in jury selection
25 extensively and how phones are often used as a carrot in

1 the stick or a punishment, especially for teenagers.

2 Look at the text messages.

3 Now, the prosecutor makes a big issue of the
4 time of text messages and the time of phone calls. Look
5 at them. He told you he makes hundreds of text messages
6 and phone calls a day. Is that an awful thing or is
7 that how we keep in touch with each other in 2014, 2015,
8 2016. Look at his records, but ask yourself if the
9 records are complete. Is the prosecutor giving you all
10 of the records? Is the prosecutor giving you all of the
11 story?

12 MR. PERRI: Objection.

13 THE COURT: Overruled.

14 MR. ZERNER: Thank you, your Honor.

15 This is the People of the State of New York
16 versus Ray Ross. Think about the resources of the
17 People of the State of New York. I'm just one man
18 defending another man. This is the prosecutor for
19 Nassau County with hundreds of prosecutors.

20 MR. PERRI: Objection.

21 THE COURT: Overruled. Continue.

22 MR. ZERNER: With thousands of police
23 personnel and he flew in a man from Kansas on a day's
24 notice to give you records. Did he give you the
25 complete records? Did he give you the complete story?

1 Or did the man from Kansas tell you I don't know, I was
2 told to look at something and show up at this address
3 and that's what I did and I showed up at this address.
4 Yeah, these are records from our phone company, okay.
5 Yes, they are phone records.

6 If you looked at anybody else's phone records,
7 there would be a lot of phone records. Does that mean
8 you did anything wrong with the phone? Or does it just
9 mean that you used your phone. It's 2016. We all have
10 a phone in our pocket. We all have something that is
11 amazingly more powerful than the computers that NASA
12 used to put a man on the moon. We're all walking around
13 with them right now. But does that mean my client did
14 anything wrong because there are phone records that show
15 he made phone calls and made text messages?

16 Take a look at them. Take a look at
17 everything, everything that you have and ask yourself
18 what you don't have and why don't you have it.

19 MR. PERRI: Objection.

20 THE COURT: Overruled.

21 MR. ZERNER: Now, that scraping of the chair
22 right there is going to be the sound that I remember
23 when I think about --

24 THE COURT: Mr. Zerner.

25 MR. ZERNER: -- being on this trial.

1 THE COURT: Mr. Zerner, sustained. Please
2 keep your comments to the case at hand.

3 MR. ZERNER: Certainly, your Honor.

4 Now think about what you heard Sarita Johnson
5 say and what she didn't say. I asked Sarita Johnson was
6 there ever a point in time when she was no longer living
7 at the address at 301 Coventry Road North and you moved
8 out on your three oldest kids when you took up with the
9 father of your fourth child. She denied it.

10 You heard credible testimony from Tara Johnson
11 who told you there was a point in time where Tara
12 Johnson, along with her mother, Pauline, were taking
13 care of Malik, Mercedes and Millinia Johnson. Ask
14 yourself whether Sarita Johnson was being honest with
15 you throughout her testimony.

16 Now the Judge is going to instruct you on many
17 different areas of the law and one of them is what's
18 called in falsus uno. It's a Latin term that basically
19 means if you think somebody was false in their testimony
20 about one thing, you can accept or disregard all of it.
21 So think about that.

22 My client sits here innocent. He sits here
23 having to prove nothing to you, but he's proven a lot to
24 you. He's told you a lot. I have told you a lot.

25 I asked her, Sarita Johnson, about whether

1 Mercedes, her older daughter, would go to Brooklyn and
2 she said no. Well, we know that Mercedes Johnson went
3 on some of these trips also. We haven't heard from
4 Mercedes Johnson, but we do know that Sarita Johnson
5 doesn't necessarily have a handle on where her kids are
6 all day every day. She's telling you what she wants to
7 tell you for her own agenda. Ask yourself why.

8 You know, it's an awful thing to think about.
9 We've all been instructed or required to think about all
10 of this stuff. Well, another thing that is difficult to
11 think about is people do lie. Children do lie.

12 Generally children lie to try to get out of trouble.
13 Millinia Johnson was in trouble when she was caught with
14 that cell phone. Her mother, again, you evaluate her,
15 is she someone you want to cross? Her mother caught her
16 with the cell phone. You heard the testimony.

17 Frequently she would miss the school bus.
18 Millinia missed the school bus. I don't blame her for
19 missing the school bus. Anybody misses the school bus.
20 You think about the chaos in that house. You think the
21 kids were up and ready to go to school and having their
22 lunch and their homework and they were ready to go and
23 get on the bus? I'm sure they weren't frequently. This
24 was another day when that happened. So Patty takes her
25 phone and calls her mother. That's the oops moment.

1 That's the moment that this case turns, not any talent
2 show in March of 2013. It's a phone call that Patty
3 makes and she's probably 100 yards away down at the
4 school bus and she calls her mother.

5 Why did she call her mother? She missed the
6 school bus. She was going to be late for school. She
7 maybe had observed other children missing the school bus
8 and their mother's helped them out to remedy the
9 problem. That's not what happened here. There was an
10 explosion when this phone call was made. There wasn't
11 talk about well, let me get you to school. We'll talk
12 about it tonight or any kind of calm proportional
13 response.

14 How are you calling me? Where are you calling
15 me from? Patty has to answer that question to Sarita.
16 If it's reasonable for you to think that that first
17 domino was knocked over by this phone call, by this
18 phone that this young lady wanted that her uncles on
19 both sides of the family provided for her, he's not
20 guilty. If you are not sure why this was brought
21 forward, why this girl was told by her mother what she
22 needed to do, what she needed to say, how she needed to
23 say it, my client is not guilty.

24 Think about when I asked each of them, Sarita
25 and Patty, about meeting with various members of law

1 enforcement. Think about where they met and how they
2 met. Look at the back of these various exhibits. You
3 will see signatures by each of them. Always both of
4 them. There were other people in the house. There were
5 detectives and police officers and other adults in the
6 house that could have brought Patty from her home to the
7 DA's office or to a police precinct, but that's not what
8 happened. Sarita was there all the time.

9 The one time Detective Toussaint had this
10 conversation with her, the three of them were in the car
11 for the vast majority of the time and then at some point
12 Detective Toussaint realized that he had to speak
13 individually one-on-one with Patty. Sarita was right
14 there. Patty knew that Sarita was going to get back
15 into that police car for the drive back. Patty knew
16 that she was going to be asked what did you say. What
17 did he ask you? So think about the dynamic of it.

18 Think about the situation in mid-December
19 driving in the late afternoon. It's dark out and
20 they're going to some abandoned parking lot to have this
21 conversation. Think about what was going on.

22 Think about the preparation. Think about
23 which witnesses seemed programmed and which witnesses
24 seemed genuine. Think about what you heard and how you
25 heard it from each individual. Do you think that I

1 could put words in George Mickens' mouth? Do you think
2 I could put words in Ray Ross' mouth? You heard them
3 testify under oath and tell you what happened and what
4 didn't happen and where and everything else.

5 Think about what you saw from Sarita and Patty
6 Johnson. Think about what they said and think about how
7 they said it. Evaluate it. Use your common sense. Use
8 your experiences to determine what you think the
9 programming, the preparation was.

10 You will see these text messages. There are
11 no nude pictures, no sexting, no elicited language. If
12 you are not sure, my client is not guilty. If you have
13 a reasonable doubt, my client is not guilty, it's just
14 that simple, because he has the protection of you folks.
15 You folks understand and you will be instructed again on
16 the law about reasonable doubt. It's an expression you
17 have heard your whole life, but this is where the rubber
18 meets the road. This is where it gets applied. The
19 Judge will read to you the definition of that. Listen
20 to it carefully.

21 Ultimately, if you are a reasonable person,
22 and I think we all think we're reasonable people, and if
23 you are talking to 11 other reasonable people and if you
24 are not sure, if you have doubts about any of this, my
25 client is not guilty.

1 And, most importantly, think about what you
2 heard from the witness stand. Think about what the
3 different people said and how they said it and remember
4 that you heard from Patty Johnson's father, Patty
5 Johnson's aunt, what they thought about these
6 allegations.

7 MR. PERRI: Objection.

8 THE COURT: Hold it, Mr. Zerner.

9 Ladies and gentlemen, it's your recollection
10 that rules. Counsel's comments are simply argument and
11 contentions.

12 Continue, Mr. Zerner.

13 MR. ZERNER: Thank you, your Honor.

14 As I have said, all I want you to do is use
15 your own recollection of what you heard from the witness
16 stand. Use your own common sense, your own life
17 experiences. Anything you are not sure of, anything you
18 don't remember, please ask for it to be read back to
19 you. If you are unsure, if you have doubt, my client is
20 not guilty.

21 He was asked directly, unambiguously on the
22 stand did he do this. He told you he did not do this.
23 He would not do this. He's a man who was providing for
24 his family, his extended family, Tara Johnson's family,
25 their extended family. He's a good man. He's a

1 generous man. You have heard that from all of these
2 witnesses. Please find him not guilty on all of these
3 charges. Thank you.

4 THE COURT: Thank you, Mr. Zerner.

5 MR. ZERNER: Thank you, your Honor.

6 THE COURT: Mr. Perri.

7 MR. PERRI: Ladies and gentlemen of the jury,
8 the question is not, as defense counsel argued in his
9 opening, whether you could see yourself where the
10 defendant was sitting. It's simply objectively from
11 where you are selected as jurors, aware of all the
12 evidence that has been put before you, using your common
13 sense, whether the People have met their burden. And
14 the evidence implores you, it impels you to the
15 unescapable conclusion that the People have met their
16 burden that Millinia Johnson sat there, told you the
17 truth and that the defendant is guilty beyond a
18 reasonable doubt.

19 The irony, ladies and gentlemen, that the
20 parade of friends and family that the defense brought
21 before you and upon any real scrutiny upon what they
22 told you, the defense case actually helps you to believe
23 Millinia Johnson all along. The defense has no burden.
24 They did not have to put on a single witness on that
25 stand, but they did. They put on several witnesses over

1 multiple days and because they did that, it is your duty
2 as jurors to scrutinize those witnesses. To look at
3 each and every one of those witnesses and determine what
4 to take from them and what to set aside.

5 And when you do that, I'm confident, based on
6 the evidence, that you will realize quickly that none of
7 the defense witnesses, none of them provided you with
8 any first-hand information except possibly the
9 defendant, himself that was directly relevant to the
10 material issues in this case.

11 They are not even capable of doing that
12 because as they each were forced to admit, they simply
13 were not there. They were not in the back of the
14 defendant's truck alone with Millinia. They were not in
15 the parking lot of National Wholesale Liquidators or
16 Western Beef. They were not in the room with the
17 defendant and Millinia at 301 Coventry Road and the
18 defendant admitted to you that this was the situation
19 many, many times over the dates that he is charged with
20 committing these crimes.

21 He admitted that he was alone with Millinia on
22 the way home from Brooklyn countless times from the
23 summer of 2013 through the summer of 2014. The
24 defendant also admitted to you when he was on the stand
25 that he was alone with Millinia in his room at 301

1 Coventry Road watching TV on many occasions, whether it
2 was wrestling or, as he pointed out, other shows as
3 well. And that this happened from 2013 through 2014.

4 And Tara and the defendant both explained to
5 you that he was the adult who was home when Millinia
6 Johnson came home from school in 2013 to 2014. None of
7 the other witnesses, by the defendant's own account, not
8 even Tara, were there at those times. And, therefore,
9 none of the defense witnesses they put before you have
10 anything material to add to your deliberations that
11 questions the reasonableness of the defendant's guilt.

12 The evidence as a whole has shown that their
13 testimony day after day was mostly entirely irrelevant.
14 A distraction from the central question in this case of
15 this defendant's guilt. Not the diversion of Sarita's
16 fitness of whether or not she was a good mother. Of her
17 being on welfare, of being poor. Of where she lived in
18 2009. That's not the issue central to this case. It
19 doesn't matter how many fathers her children have.

20 And although the defendant spent a lot of time
21 arguing here in front of you and questioning witnesses
22 on the stand about those issues, the only material
23 question the judge is going to put before you that you
24 have to answer as jurors is this defendant's guilt, not
25 Sarita's guilt, not Sarita's responsibility, but this

1 defendant's guilt. She's not on trial, he is.

2 From their witnesses first you heard from
3 Rafael Mickens, Millinia's biological father. A cousin
4 and friend of the defendant who had no independent
5 evidence with regard to either way this case should go,
6 but he wants you to trust his judgment. Trust the
7 judgment, rely on him because he's the man that he told
8 you was so involved in his daughter's life. So involved
9 in his daughter's life that he didn't know the day she
10 was born. His testimony was, I think it was 2000. Her
11 name is Millinia. This man, the last time he saw his
12 daughter was the October before this. He lives one town
13 over from her and he also claimed he's very involved in
14 her school but doesn't go to her school conferences.
15 Never went to a parent-teacher conference. He didn't
16 know when she graduated from middle school.

17 His testimony doesn't create any reasonable
18 doubt of the defendant's guilt, but what we did learn
19 from him, if nothing else, after meeting Rafael Mickens
20 on that stand and after hearing his answers to the
21 questions, what you learned was why Millinia Johnson was
22 so desperate to find a parent, to find a male figure, to
23 find someone she can look up to. Why she was such an
24 easy target for this defendant as a sexual perpetrator.

25 The only fact that Rafael Mickens put before

1 you is something you already knew, that to Mr. Mickens'
2 cousins and friends, the defendant always appeared
3 generous to Millinia, gave her everything that he could
4 afford to do and at some point during 2013 he started to
5 pay Millinia's phone bill. This is exactly what
6 Millinia testified to. The defense actually provided
7 you with another reason to trust Millinia when she was
8 on the stand.

9 Next up in the defense case was George
10 Mickens, uncle to Millinia. Convicted drug dealer.
11 Criminal many times over and a felon. What do we learn
12 about this case from him? We learn nothing new again.
13 We learned nothing controversial. We barely learned
14 anything arguable or even relevant. Uncle George paid
15 for what the defense characterize is Millinia's first
16 phone. A phone from 2011. Not either of the phones in
17 this case.

18 Uncle George also explained how he helped the
19 defendant take over the account and start paying for
20 Millinia's phone at some point in 2013. All this
21 information just again corroborates what Millinia and
22 what Sarita testified to on the stand here. And
23 everything he said actually urges you all the more to
24 believe Millinia Johnson. Because you also heard from
25 Uncle George.

1 What you heard from almost every defense
2 witness in this case, how Millinia Johnson is a good
3 kid. How she does well in school. How she was on the
4 honor roll. How she was in band. How she played
5 sports. You never heard from Uncle George or any
6 defense witness she's actually some devious liar. That
7 she's a criminal mastermind, a vindictive monster that
8 would frame the defendant. You never heard that, ladies
9 and gentlemen, because the evidence over and over again
10 tells you it's not true.

11 Then the defense put on the stand -- they have
12 no burden -- the defendant's own family, his ex-wife and
13 two children. People who admitted they loved him and
14 wanted to help him. Who discussed the case many, many
15 times either with each other, with him or his attorney.
16 His adult daughter Jasmyn is also the man she lives with
17 and pays all her housing expenses. His son Justyn says
18 he's his super hero, his idol, the man he looks up to.
19 For any of the Rosses it would destroy their world to
20 have to admit their father's guilt. And honestly, why
21 should they admit their father's guilt?

22 Unlike you, as members of the jury, they have
23 no knowledge of the critical evidence in this case.
24 They never sat and listened to Millinia testify to tell
25 you what happened to her day after day either in the

1 defendant's room or in the truck. They never looked at
2 the defendant's phone records. They never examined the
3 text messages that were going back and forth all hours
4 of the night between a 54-year-old man and a 13-year-old
5 girl. They were unaware of all of that. So why would
6 they have to admit their father did these crimes. They
7 aren't the jurors, you are.

8 They weren't in the room. They weren't in the
9 truck, they weren't alone with the defendant and
10 Millinia. They don't have testimony and evidence. You
11 do. They don't have the testimony and the evidence that
12 you need to come to the conclusion the defendant is
13 guilty beyond a reasonable doubt.

14 And the sad reality of how the defendant's
15 conduct will shatter more lives than just Millinia's,
16 that will shatter his own family does not prove him
17 innocent. Does not create reasonable doubt on which you
18 can base your verdict. But nevertheless, take note of
19 how the Rosses disagreed a lot with each other and the
20 defendant, himself about the access he had to Millinia
21 and the relationship he had with Millinia.

22 Paula Ross, she said she would spend equal
23 amounts of time with Millinia, her daughters, Mercedes,
24 the defendant, Tara, Sarita and other unnamed people in
25 Brooklyn and also in Lakeview at 301 Coventry. She

1 would be doing hair. She would be sharing meals,
2 hanging out and she would move all of her cumbersome
3 large equipment from Brooklyn to Queens to Lakeview to
4 do the hair there just as much as it would happen in
5 Brooklyn, never being paid a dime. Doing it out of the
6 goodness of her heart.

7 Jasmyn Ross took the stand and explained
8 early, although she had gone to Lakeview with her
9 mother, to Millinia's home where the defendant also
10 lived, they quickly stopped going there because,
11 according to Jasmyn as she testified before you, the
12 house is full of animal feces and they didn't want to go
13 back and they spent all their time in Brooklyn after
14 that.

15 And Justyn, where he claimed on
16 cross-examination that he was riding back with his
17 father to Lakeview at night with Millinia. Although he
18 couldn't explain why he would be doing that since he
19 lives and works in Brooklyn. He doesn't live or have a
20 room at 301 Coventry. And then when asked on
21 cross-examination if you can just estimate in a given
22 month how many times that happened, he repeatedly said
23 he couldn't. He couldn't give any estimate as to how
24 many times it happened because perhaps it never happened
25 at all or it happened so few times that it doesn't

1 create any reasonable doubt in this case.

2 Paula and Jasmyrn never mentioned him coming
3 back with Millinia and the defendant. Paula
4 specifically said it was either her or the defendant who
5 drove Millinia back. Just one of the two of them, no
6 one else. And the defendant, himself, when he admitted
7 he took Millinia back to Coventry, the defendant,
8 himself never mentioned his son being in the car with
9 them or even Paula giving rides half the time. And if
10 his sister is right, then why is Justyn spending the
11 night randomly in a county he neither lives in or works
12 in with a house that is full of animal feces and there
13 are nine to 19 people running around in every direction.

14 Ladies and gentlemen, on the other hand, the
15 Rosses, each and every one of them, did agree about
16 something and you should take away from their testimony
17 this, they all agreed that they loved Millinia and she
18 loved them. They all agreed that the defendant was
19 generous and was kind to Millinia. They all agreed that
20 there were not any fights or problems of any kind
21 between Millinia Johnson and the defendant either before
22 October of 2014 or August of 2014. They gave her
23 clothes, they gave her food. They gave friendship.
24 They gave her a family, the girl Millinia, their Patty.
25 Not Mercedes, not Sherima, this girl that visited and

1 went on trips for free without her aunt, without her
2 mother that their father brought into their lives for no
3 apparent reason.

4 When each Ross was asked to name the people at
5 these many dinners out the defendant was paying for, it
6 was always just them when they had to name it. It was
7 the Rosses, plus the defendant, plus Patty who is
8 Millinia and they never actually named anyone else that
9 went out on those occasions.

10 They all agreed that she was special. She was
11 their blood. Millinia, the girl that their father
12 decided was now his and not Sarita's.

13 Do your duty, ladies and gentlemen, look
14 beyond the noise. You must peer past all the confusion
15 in this case and overcome the horror of admitting that
16 the evidence proves to you beyond a reasonable doubt
17 that the bizarre Cinderella story that the Rosses and
18 Tara repeat to themselves that they want to believe is
19 just that. It's just a fairytale, a bedtime story they
20 need to tell themselves at night so they don't have to
21 fear the nightmarish reality that this defendant was
22 sexually abusing Millinia Johnson this entire time.

23 The man who saw himself as both her principal
24 charge and her personal messiah, who appeared
25 trustworthy, who appeared kind, who gained access, just

1 as Mr. Hanson explained to you, to accomplish his
2 primary goal of sexual perpetration against Millinia
3 Johnson.

4 Now, the Rosses and the defense other
5 witnesses may want to, but you took an oath to not hide
6 from the sad truth. That the evidence implores that the
7 defendant, an adult man, put his 54-year-old mouth on a
8 then 12-year-old girl's vagina. Millinia's vagina.
9 That the defendant, an adult man, rubbed his 54-year-old
10 penis in circles on the buttocks of a then 12-year-old
11 Millinia. That this didn't just happen once, it didn't
12 happen twice, but it happened over and over again
13 between March 1st of 2013 and December 29th of 2013.
14 That it continued past her birth date, her 13th
15 birthday, and continued all the way into the summer.
16 All the while the defendant hoped some day he was going
17 to get to smash her. He was going to get to actually
18 have vaginal sex with her because she belonged to him.

19 Based upon the evidence you know the defendant
20 is guilty, guilty beyond a reasonable doubt of all the
21 charges for two simple reasons. Two realities the
22 defendant cannot avoid the truth, despite all the
23 irrelevant testimony that's been put before you, he
24 can't escape.

25 First, there is no actual evidence of any

1 reasonable motive for Millinia Johnson to have gotten on
2 the stand and to have lied to you. And the defense
3 counsel keeps asking you to think about that. When you
4 actually look at the evidence, there is no reasonable
5 motive for her to have lied.

6 Second, there is no reasonable innocent
7 explanation to the phone records and to the text
8 messages unless Millinia sat there, swore and told you
9 the truth.

10 Now, first, about the motive. There is
11 nothing, not a single shred of actual evidence. We're
12 not talking about innuendo. We're not talking about
13 speculation. We're not talking about hopes and dreams.
14 We're talking about evidence. There is nothing to
15 support the rational belief that Sarita, and especially
16 Millinia, have had a motive to lie about the sexual
17 abuse. There is no testimony or other evidence to
18 support anything defense counsel has argued to you.

19 Defense counsel would have you believe that
20 Sarita Johnson has orchestrated all of this to get the
21 house. The house at 301 Coventry that Tara allowed to
22 go into foreclosure, despite having total control and
23 power of attorney of all her mother's assets and working
24 for a bank. The house that Tara and Ray Ross turned the
25 heat off in, despite Tara's own children and

1 grandchildren, one as young as three months old, living
2 there at the time. And she never felt bad about that.
3 That it was tough love. The house that the defendant
4 doesn't own. He has no legal claim on.

5 Ladies and gentlemen, getting rid of the
6 defendant, getting him out of 301 Coventry, it didn't
7 change anything about the house. It doesn't change
8 Tara's power of attorney. It doesn't put his name on
9 the deed. It doesn't put Sarita's name on the deed.
10 All it did was leave Sarita and Millinia Johnson poorer,
11 more isolated, fiscally worse off, more desperate and
12 still living in the basement. And, according to Tara
13 Johnson's testimony, sleeping on mattress, not even
14 beds, mattresses on the floor in the basement of that
15 same house.

16 So ask yourselves, what did they gain by
17 getting rid of Ray Ross from that house? Nothing.
18 Absolutely nothing.

19 Focus on the time line as well. There was
20 nothing too inconvenient for Tara and Ray up until
21 August of 2014 into October of 2014. There was nothing
22 that not paying the bills was too disrespectful to put
23 up with until August and then October of 2014. And
24 though defense counsel asked a lot of questions about an
25 alleged physical fight that took place between Sarita

1 and Tara in a car, about Tara letting Sarita's child go
2 with a noncustodial parent, Tara sat there on the stand
3 and told you that physical fight in no way affected her
4 relationship with her sister. She said after the fight,
5 everything was the same as it had always been. There is
6 no incident. There is no trigger that changed their
7 relationship or the status quo in 301 Coventry except
8 Sarita Johnson finding those text messages. That's the
9 only thing that changed.

10 It's not that she just discovered her daughter
11 had a phone. It's that she saw what you will see. What
12 you have already looked at when it was published to you
13 and what you will look at again during deliberations.
14 Text messages that any reasonable individual, any
15 reasonable parent would be upset about seeing their
16 13-year-old getting from a 54-year-old.

17 So focus again on Millinia. She gained
18 nothing, nothing from all of this. Nothing from sitting
19 there for two days. Nothing for two years putting up
20 with strangers repeatedly asking her about the intimate
21 details about a sexual relationship that she had with a
22 54-year-old man. She gains nothing from being
23 cross-examined for hours.

24 Would defense counsel have you believe from
25 his questions of Millinia she did all this in part for

1 the pizza? She did it for the cab rides to come to the
2 district attorney's office? She did it for a blouse,
3 for a sweater she wore in Court? Is any of that
4 reasonable? No.

5 But coming forward, the one thing Millinia
6 Johnson did gain, ladies and gentlemen, is that she got
7 her freedom from the abuse. But by coming forward,
8 although she got that, and that is priceless, she lost
9 everything else. She lost everything she thought she
10 wanted. She lost everything that the man she thought
11 she loved was providing her. She lost everything that
12 the replacement for a father had promised and she lost
13 everything that she thought her mother either couldn't
14 or wouldn't give her. She lost all of that by admitting
15 what those texts meant when her mother found them both
16 times.

17 She lost everything because she exposed what
18 the defendant demanded in exchange for his inexplicable
19 generosity to this girl. About what he demanded in
20 order to continue the flow of his affection and of the
21 goods and of the money and of the phone and everything
22 else in her life.

23 The evidence shows that this defendant, what
24 he demanded was that she give him attention, as much as
25 possible, constantly. And if she didn't, he got upset.

1 What did the evidence show? She had to be his
2 daughter, not Sarita's. And finally, that Millinia,
3 first 12, then 13, she had to not just be his daughter,
4 but she had to be his lover. He required her to submit,
5 allow him to abuse her, be his sexual play thing. And
6 when she testified here, when she exposed the disgusting
7 price that she paid for that man's affection, on top of
8 everything else, remember that this was the first time
9 she was in the same room as him since he was not
10 voluntarily just leaving the house in October of 2014,
11 as defense counsel and defense witnesses keep saying,
12 but was escorted from that house by law enforcement.

13 Unlike many of the defense witnesses who could
14 not wait to talk and at times could not stop talking,
15 for Millinia it was hard. Even if you turned off the
16 sound, you could see the truth of what she was telling
17 you. You could see her tears and that those tears when
18 we just got to the point of discussing the actual sexual
19 abuse, they were hard to watch because they were the
20 sign of some deep pain inside of her. They were not
21 evidence of an act. They were evidence you should
22 consider of being proof of the truth of what happened to
23 that girl.

24 After all, if it was just a scheme, if it was
25 just a lie, if it was just free flowing, it could be

1 anything they wanted it to be, wouldn't she have given
2 the information a lot faster and a lot better, because
3 if it didn't really hurt her, if it didn't really pain
4 her to be in front of her abuser. After all, she was
5 under Sarita's diabolical control, as defense counsel
6 wants you to believe, why not play up the allegations.
7 Why not say he put his penis into her mouth. That she
8 performed oral sex on him. Especially for Sarita.

9 If there is no truth here and if nothing
10 happened and if Sarita and Millinia are making this up,
11 when Sarita testified about walking into the room, why
12 doesn't she just say I saw them at least touching each
13 other or lying right next to each other on the bed or he
14 looked like he was about to kiss her.

15 No, she doesn't. They don't make their story
16 worse because what they are telling you the evidence
17 shows is the truth about what happened. And that the
18 truth, what they each knew and only what they each knew
19 and experienced, ladies and gentlemen, is enough to
20 convict the defendant beyond all reasonable doubt.

21 Because some time after the talent show, not
22 because of the talent show, but just after the talent
23 show in March 2013, when Millinia was still
24 12-years-old, the defendant put his hands down her pants
25 directly squeezing and rubbing her buttocks. Nothing

1 more that first time. And recall what Mr. Hanson said
2 about boundary incursions, about grooming, about making
3 sure that a victim is not going to go run and tell. And
4 Millinia didn't. She didn't tell anyone and she came
5 back and so it escalated and it continued to happen.

6 And though Tara Johnson unambiguously stated
7 that her boyfriend, the defendant was never alone with
8 Millinia in the bedroom, you know Millinia Johnson was
9 telling the truth when she said she was there because
10 the defendant, himself when he took the stand conceded
11 that he would watch television alone with Millinia
12 Johnson in that room.

13 And that summer after the first incident
14 Millinia was still 12-years-old, the trips to Brooklyn
15 and the sexual escalation started, Tara and the
16 defendant both told you many details about Millinia's
17 trips to Brooklyn. Tara testified specifically about
18 how Millinia would jump into the defendant's white
19 truck. Tara also told you she never went to Brooklyn
20 and rarely, somewhat reluctantly, participated in the
21 children's activities that the defendant was more than
22 happy to organize for all the children. Although when
23 prompted, Tara and the defendant would say at times
24 Millinia's sister Mercedes would also go as well.

25 Think about it in the defendant and Tara's

1 testimony there were no details given about Mercedes
2 trips. There was no Mercedes jumping into the car so
3 excited to be with Ray. There is no mention of
4 Mercedes, of what happens or how she was special and
5 this makes sense because on cross-examination the
6 defendant conceded that it was Millinia, not Mercedes
7 who was special to him. His Patty. Millinia was
8 different.

9 After all, Millinia, not Mercedes had become
10 his blood. And the defendant partially admitted on
11 cross-examination that perhaps Mercedes, Millinia's
12 older sister was just too old to be special the same way
13 that Millinia was.

14 According to the defendant and according to
15 Millinia Johnson and according to Sarita Johnson, they
16 started going on these trips usually on Saturdays in
17 2013. And according to all three of them, he would
18 drive home at night. Again, just as Millinia told you.

19 The defendant even conceded that more often
20 than not it was just Millinia that accompanied him with
21 his family in Brooklyn on Saturdays.

22 But that is where the defendant's admissions
23 ends because, ladies and gentlemen, that is all the
24 defendant can admit to you. Because anything more
25 proves him guilty and that, not everything defense

1 counsel argued to you, that is a motive to lie. Because
2 unlike Millinia and Sarita Johnson, he has a clear
3 undeniable, rational motive to stop telling the truth or
4 at least the whole truth to all of you when he sat in
5 that chair.

6 The Judge is going to instruct you that he is
7 an interested witness as a matter of law. He's
8 interested in the outcome of this case and that gives
9 him a reason not to be truthful with you.

10 What Millinia tells you happened week after
11 week in the back seat of that car, in the defendant's
12 room, at National Wholesale Liquidators, at Western Beef
13 there is not a rational explanation for her to have made
14 that up. For Millinia described to you the temperature
15 of the defendant's semen, the manner in which he
16 masturbated himself. The way that he would rub his
17 penis in circles on her buttocks. The process by which
18 his penis would get bigger and point up when he rubbed
19 himself. Those details credit her testimony.

20 For what she tells you what happened in the
21 gaps the defendant won't talk about, defense fails to
22 give you any rational explanation as to why she would be
23 lying about all of that.

24 Every defense witness told you she's a good
25 kid. Every witness explained that the defendant and his

1 family were nothing but kind to her; that they loved
2 her. And every witness, People and defense, told you
3 how well the defendant treated her. He gave her
4 clothes, food, fun, phone, money, even a clarinet.

5 Getting rid of the defendant upset the status
6 quo at 301. For better or for worse, whether you agree
7 with Sarita Johnson's lifestyle or not, she loses and
8 gains nothing by getting rid of Ray Ross except more
9 unpaid bills, a house deeper into foreclosure and no one
10 to split any of the costs.

11 What else she gets, just like her daughter, is
12 an end to the abuse. Much in the same way, ladies and
13 gentlemen, the second truth that you cannot escape from
14 and the defendant cannot escape from in finding him
15 guilty is that there is no reasonable explanation, no
16 alternate, no innocent, no non-criminal explanation to
17 his text messages.

18 The defendant didn't have to become a witness.
19 He could have remained silent, but he didn't. He took
20 the stand and you can scrutinize his testimony just like
21 anyone else's. He sat there on the stand and stated
22 over and over again to you that there was nothing
23 inappropriate about any of the text messages that he
24 sent to Millinia Johnson. That his expressions of love
25 were normal. He was like a father figure is what he

1 likes to say about himself over and over. A father
2 figure who texts at all hours of the day and night.

3 Nothing wrong with the defendant to text a 12-
4 and this then 13-year-old girl at 11:00 p.m., 12:00
5 a.m., 1:00 a.m., 4:00 a.m. And when you look at the
6 phone records, ladies and gentlemen, when you go through
7 them during deliberations, again, notice how many times
8 that this happens. It's not just any one single
9 incident, but it is over and over again.

10 There are calls at 5:46 a.m., 12:18, 12:29
11 a.m. Out calls the defendant is placing to Millinia.
12 He calls again oftentimes past 10:00 at night, 10:13,
13 10:14. Then again six in the morning, 12:19. These
14 calls constantly are going on each and every month, 70,
15 77, 72 times they're calling each other every month.
16 And remember that they live together during this time,
17 ladies and gentlemen.

18 Why would you be calling and texting someone
19 whom you share a house with, who you run into day after
20 day, who you are in the same room with? Why would you
21 need to be texting her literally, by the end in August
22 and July of 2014, 532 times in a month if you live with
23 her and you are just upstairs with her aunt?

24 The reason you have to do that, ladies and
25 gentlemen, is because you need to keep it secret. You

1 have to conceal it.

2 And why would you have to conceal it? Why
3 would you have to keep it secret? Because according to
4 him, he's just checking in on her. He's just quote
5 "trying to give a self-esteem boost."

6 When you read the actual text messages, ask
7 yourselves about a father figure giving a self-esteem
8 boost. Was it when the defendant was continually using
9 the F word at her? Is it when he continually threatens
10 to cut her off or is it when the father figure smothers
11 her with so much love and affection in language that is
12 more appropriate for a middle school boy across the
13 classroom than a 54-year-old man with a 13-year-old.

14 The reason he has to conceal it, ladies and
15 gentlemen, because the phone he personally purchased and
16 said on the phone yeah, I recognize, no, I don't know.
17 I don't know what I bought. I'm not a Smartphone guy.
18 That phone he bought is a leash that he used to control
19 Millinia Johnson and he can't admit his connection to it
20 and he can't admit what it was used for.

21 It was used for constant contact with his
22 little Pattito, his blood, his child. The object of his
23 affection that belonged to him because of everything he
24 did for her and all the money that he spent on her.

25 When you look at the text messages, ask for

1 them, read them, look through them again. But remember
2 in his testimony this defendant said to you he never
3 used the word smash. He had no idea what the word smash
4 meant. He didn't know that it was sexual in nature. No
5 idea whatsoever what that could have been. And hold him
6 to his words where he says he didn't use that term,
7 didn't know what it was.

8 Eighteen months into the sexual abuse, ladies
9 and gentlemen, when these text messages are going back
10 and forth between the defendant who admits his phone
11 number, who admits that he texted her, who admitted
12 every other text I put before him except this series,
13 realized that this is happening 18 months into the
14 sexual abuse. Where this conversation which is going on
15 throughout the day starts where you have Millinia
16 Johnson say something disturbing and ugly. Remember he
17 says none of their conversations were sexual at all in
18 nature.

19 Millinia Johnson writing, You don't answer
20 your phone, I'm gonna cut your dick off, that way nobody
21 can get smashed by you.

22 And the defendant doesn't react as the father
23 figure would and say that's not an appropriate way to
24 talk to your father figure. The defendant doesn't say
25 we have to cut this conversation off. He keeps texting

1 and actually doesn't realize four pages of text messages
2 even that she said it. And then suddenly a little while
3 later, he says, Hey, that's scary.

4 Millinia says, What's scary?

5 And then he says, Cutting my thing off.

6 And Millinia says that's not scary. If I
7 can't have you, then nobody can.

8 And once again, this defendant doesn't say
9 whoa, what do you mean, like why are you talking this
10 way to me. This is totally inappropriate. There is no
11 surprise in his reaction in these text messages.

12 MR. ZERNER: Objection.

13 THE COURT: Overruled.

14 MR. PERRI: Instead, what does the defendant
15 say? That's selfish. Selfish that she wants him and
16 nobody else can have him.

17 And Millinia, 18 months into sexual abuse
18 writes, No, I'm just saying what's mine is mine, nobody
19 else's.

20 His reaction, not that's inappropriate, stop.
21 Even to turn off his phone. I'm thinking. One more
22 chance. And then, Don't hold your breath. Nah, fuck
23 it, you're done. I'm smashing.

24 Patty then has lots of questions about when.

25 Don't keep me on hold. You will lose me to

1 somebody.

2 Demands for the clarinet. Take away the
3 money, the music, the bank accounts.

4 No allegation here that either he's worried
5 that Sarita Johnson is going to use the phone, as he
6 claimed was his concern about why he had to take the
7 phone away. No allegation by the defendant that Patty,
8 Millinia has done anything wrong. No, just that he has
9 to wait. Gets him upset.

10 And then finally, in the same line of text
11 messages at 10:43 and 10:47 at night, You left without
12 saying good night or anything.

13 I didn't want to wake you up.

14 And in the middle of all this, ladies and
15 gentlemen, just remember again here, that led him to
16 say, I'm thinking.

17 Millinia Johnson: I'm just saying what's mine
18 is mine, nobody else's.

19 What does this 13-year-old girl think she
20 owns? What does this 13-year-old girl thinks she has a
21 right to exclusivity about? His penis that she's going
22 to cut off so he can't smash anybody else. But the
23 defendant says he's just a father figure. He's never
24 had sexual contact with Millinia Johnson and these are
25 all just innocent texts that you should ignore. It's

1 not reasonable.

2 The defense also wants you to believe that
3 seeing these texts and getting angry is unreasonable for
4 Sarita Johnson. In looking through that phone, the
5 phone she found in August of 2014, her taking the phone
6 away and getting angry was crazy. To see those texts
7 from her 13-year-old to a 54-year-old and back, that was
8 unreasonable. And it's not unusual that he's texting
9 and speaking like that because he does this with his own
10 children hundreds of times a month, all three of them.
11 His wife five times a week, his girlfriend three times a
12 day and he still has time for a 13-year-old who is not
13 his ex-wife or his girlfriend and not even an adult or
14 not even his own child, despite him saying she's his
15 when on the stand.

16 The defendant told you he didn't know what the
17 word smashed meant, but he used it. He denied it
18 because he knows it proves him guilty. He can admit
19 many of the other texts because he can even try to spin
20 them. He's trying to tell you he's just saying I love
21 you. Even the text when he says love or you are a piece
22 of my heart or a part of me dies when you are away from
23 me. His idea of a father's love is not any reasonable
24 common sense of a father's love. It's full of jealousy
25 and full of insecurity and it's full of rage.

1 But it's not just one phone in this case.
2 It's also something the defense cannot get beyond. Even
3 if Sarita is unreasonable and doesn't have a good
4 relationship with the defendant, or if this was all made
5 up and Sarita accused him in August of this conduct or
6 just tell him to stay away from her daughter, he then
7 goes and admits to you in secret in October, months
8 later, which the phone records reflect there is no
9 contact on Millinia's number for those two months, that
10 months later he goes and gets her a second phone and
11 it's a secret phone and it's a phone that not just
12 Sarita can't know about, but when you look at the text
13 messages on the second phone, ladies and gentlemen, you
14 will see the defendant's concern that anyone will know
15 about it.

16 Again, with the defendant's phone number that
17 he admits is his number at the top of the page. Then at
18 the bottom, soon after she gets the phone, Do anybody
19 out there know about the phone?

20 And Millinia says, Mercedes and Malik.

21 You think that's okay, the defendant?

22 Millinia saying, Yes, because they want her to
23 have a phone.

24 The defendant didn't want this just to be
25 secret from Sarita. This was his connection to Millinia

1 and it had to be preserved above all else. This is not
2 tough love as the defense tries to portray it to you.
3 This isn't turning off the heat because people aren't
4 paying the bills. This is turning off her phone or
5 threatening to turn off her phone, take away the
6 clarinet, stop allowing her to go to Brooklyn, when you
7 look at all the messages together, to control her, to
8 manipulate her to get what he wants.

9 Quite honestly, what else could this
10 54-year-old want from her except what is in those text
11 messages? Smashing, love, affection from a 13-year-old
12 girl, sexual abuse.

13 Mr. Hanson explained to you that Millinia --
14 that disclosers are reluctant to disclose.

15 In this case Sarita Johnson gets that phone
16 call when Millinia missed the bus in October. It wasn't
17 that she was upset Millinia missed the bus. It wasn't,
18 she explained to you, she was upset Millinia had a
19 phone. When did she get angry? Once she gets into the
20 phone, has Millinia unlock it and sees these messages
21 all over again. That what was supposed to be over has
22 now begun again.

23 On the stand you saw Millinia, just as a
24 reluctant discloser would, as Mr. Hanson tried to
25 explain, had difficulty in struggling to answer the

1 questions. She was never eager to get the defendant,
2 not from the beginning, not with Detective Toussaint,
3 not from here on the stand. She's not playing her part
4 in a scheme and a scam. She's meek. She's embarrassed.
5 She's reluctant because when you look at the text
6 messages you will also see over and over again how she
7 at that time she did think she loved him. She was in
8 it. In the middle of it. I love you, Ray Ray,
9 constantly.

10 But her regret, her imagined love for the
11 defendant, any mistakes you might put onto Millinia
12 Johnson, none of that justifies what the defendant did.
13 You might not like how she spoke sometimes in those text
14 messages, but why is she doing that? Because of what
15 this defendant did to her. Where he brought her to
16 after 18 months. And by her age 12 when this started,
17 13 when it ended, she can't consent. The law protects
18 her.

19 When you listen to the Judge's charge and the
20 defendant's crimes, also know the law doesn't require
21 specific dates, it requires a starting point and a
22 finishing point. A period of three or more months, two
23 or more acts of sexual contact and, finally, at least
24 one, just one of these acts was oral sexual contact
25 between the victim under 13 and the defendant over 18.

1 Ladies and gentlemen, of the jury, the
2 evidence satisfies all of this with not one, not two,
3 which would have been enough for a course of conduct,
4 but weekly contact and oral sexual contact from the end
5 of Millinia's sixth grade year all the way past her
6 birthday into the next summer until Sarita Johnson found
7 the phone. The total number of incidents are ten times
8 what the law requires.

9 And what does it add up to is just tragedy.
10 You know her birthday. She gave it to you. Her mother
11 gave it to you, December 30, 2000. And the defendant
12 gave you his birthday and conceded his age, 53 and then
13 54.

14 Defense counsel made a point of saying this
15 was the defendant's day in Court, but it's also
16 Millinia's only opportunity and this evidence is her
17 only chance to be considered by a jury like you. If
18 while you deliberate you see any of your fellow jurors
19 not taking this difficult task to heart, not taking the
20 charges seriously, you have to consider to hold them to
21 their oath.

22 If someone asserts there is reasonable doubt,
23 ask them for their reasons to explain themselves, to
24 give you an answer, not just a feeling, not just a gut
25 reaction, not just a prejudice, but to actually explain

1 what their reasonable doubt and rationale is because
2 that can't be satisfied by assumptions or sympathies.
3 And demand that everyone go back to the actual evidence.
4 And if someone is trying to ignore it, confront them
5 with it. Apply your common sense to it. You won't find
6 it lacking.

7 The day before Sarita took the second cell
8 phone from the defendant, as I mentioned in my opening,
9 I'll end with this, the defendant texted Millinia
10 Johnson, Don't worry, everything is going back like
11 before. And that she should also be careful because
12 you're never gonna know how good she had it until it was
13 gone.

14 He told her, Don't be stupid in the next
15 couple of pages. Nobody will ever treat you like me
16 again.

17 Nobody, no grown adult, no 54-year-old man, a
18 family friend or, as he wants to envision himself, a
19 father figure, should ever have treated Millinia
20 Johnson, 12- and 13-years-of-age like this defendant
21 did, according to the evidence.

22 The evidence before you, there is no
23 reasonable doubt that this happened. There is no
24 alternate theory. There is no motive. There is no
25 actual evidence of a scheme, just proof, proof that you

1 must apply to the law to find the defendant guilty. To
2 find the defendant, between March 1st of 2013 and
3 December 29th of 2013 had repeated, monthly, if not
4 weekly contact and oral sexual contact with Millinia
5 Johnson when she was 12 and he was 54.

6 Follow the evidence to the conclusion that
7 this conduct and contact continued past her 13th
8 birthday when the law ends, and continued all the way
9 past that, all the way through August, the text messages
10 and everything continuing to October and all of it
11 during the entire scheme of this endangered her moral,
12 mental and physical welfare.

13 Beyond all reasonable doubt, according to your
14 common sense under the law, ladies and gentlemen, the
15 only verdict you can return on this evidence is guilty.
16 Guilty on each and every count before you. Thank you.

17 THE COURT: Thank you, Mr. Perri.

18 So, ladies and gentlemen, next up is my
19 obligation to give you my final instructions on the law.
20 Because it's after 12:00 now and my instructions are
21 going to go for a little while, we're going to break for
22 lunch now and I'll give you the instructions immediately
23 at 2:00 p.m. and then you will retire for your
24 deliberations, okay.

25 Remember my admonitions. Don't say anything

1 about the case. Forget about it over lunch. We'll see
2 you right back here at 2:00 p.m. for instructions, then
3 deliberations.

4 (Whereupon, the jury exited the courtroom.)

5 THE COURT: Counsel, 2:00 p.m. sharp we'll get
6 started again.

7 (A luncheon recess was taken.)

8 AFTERNOON SESSION

9 THE CLERK: Continued case on trial, People v.
10 Ray Ross. The jury is not present. All parties are
11 present.

12 People ready?

13 MR. PERRI: Yes, your Honor.

14 THE CLERK: Defense ready?

15 MR. ZERNER: We are, thank you.

16 THE COURT: Are we ready for the jury?

17 MR. PERRI: Yes, your Honor.

18 THE COURT: Do I have counsel's permission,
19 should we get a note from the jury for exhibits that are
20 in evidence, to have the clerk have the court officer
21 deliver those exhibits to the jury?

22 MR. ZERNER: Certainly, your Honor.

23 MR. PERRI: Yes, your Honor.

24 THE COURT: Thank you.

25 (Whereupon, the jury entered the courtroom.)

1 THE CLERK: Let the record reflect the
2 presence of the jury. All parties are present.

3 Are the People ready again?

4 MR. PERRI: Yes, your Honor.

5 THE CLERK: Defense?

6 MR. ZERNER: We are, thank you.

7 THE COURT: Good afternoon, ladies and
8 gentlemen of the jury. Welcome back. I will now begin
9 my final instructions to you on the law and you will
10 take those instructions with you as you start to
11 deliberate on the matters at hand.

12 I will now instruct you on the law. I will
13 first review the general principles of law that apply to
14 this case and all criminal cases. You have heard me
15 explain some of those principles at the beginning of the
16 trial.

17 Next I will define the crimes charged in this
18 case, explain the law that applies to those definitions
19 and spell out the elements of each charged crime.

20 Finally, I will outline the process of jury
21 deliberations.

22 During these instructions I will not summarize
23 the evidence. If necessary, I may refer to portions of
24 the evidence to explain the law that relates to it.

25 My reference to evidence or my failure to

1 refer to evidence expresses no opinion about the
2 truthfulness, accuracy or importance of any particular
3 evidence. In fact, nothing I have said and no questions
4 that I have asked in the course of this trial was meant
5 to suggest that I have an opinion about the case. If
6 you have formed an impression that I do have an opinion,
7 you must put it out of your mind and disregard it.

8 The level of my voice or intonation may vary
9 during these instructions. If I do that, it's done
10 simply to help you understand the instructions. It's
11 not done to communicate an opinion about the law or the
12 facts of the case or of whether the defendant is guilty
13 or not guilty.

14 It's not my responsibility to judge the
15 evidence here, it's yours. You and you alone are the
16 judges of the facts and you and you alone are
17 responsible for deciding whether the defendant is guilty
18 or not guilty.

19 In your deliberations you may not consider or
20 speculate about matters relating to sentence or
21 punishment. If there is a verdict of guilty, it will be
22 my responsibility to impose an appropriate sentence.

23 Additionally, I remind you, as I have already,
24 that what the lawyers said in their openings is not
25 evidence. So if a lawyer in an opening stated that the

1 lawyer -- excuse me.

2 So if a lawyer in an opening stated what the
3 lawyer believed would be the evidence and it turns out
4 that no such evidence materialized, then you must
5 disregard what the lawyer said in the opening and decide
6 the case on the testimony and other evidence you heard
7 and not what the lawyer said in the opening.

8 Similarly, what a lawyer said in summation is
9 not evidence, as you know. So, if a lawyer asserted as
10 fact something that is not based on the evidence, you
11 must disregard it.

12 Remember, a summation is for the purpose of
13 permitting the lawyers to submit to you for your
14 consideration the facts, inferences and conclusions
15 which they contend may properly be drawn from the
16 testimony and the other evidence that you had already
17 been presented with.

18 Now, a separate crime is charged against the
19 defendant in each count that will be submitted for your
20 consideration. You must decide each count separately.
21 Your verdict on one count should not control your
22 verdict on any other count. You have to decide it all
23 separately and distinctly.

24 When you judge the facts, you are to consider
25 only the evidence. The evidence in a case includes the

1 testimony of the witnesses and the exhibits that were
2 received in evidence. Testimony which was stricken from
3 the record or to which an objection was sustained must
4 be disregarded by you. Exhibits that were received in
5 evidence are available upon your request for your
6 inspection and consideration. Exhibits that were just
7 seen during the trial are marked for identification but
8 not received in evidence are not evidence and are thus
9 not available for your inspection and consideration, but
10 the testimony based on exhibits that were not received
11 in evidence may be considered by you. It's just that
12 the exhibit, itself is not available for your inspection
13 and consideration.

14 Now, in evaluating the evidence you may
15 consider any fact that is proven and any inference which
16 may be drawn upon such a fact. To draw an inference
17 means to infer, find, conclude that a fact exists or
18 does not exist based on proof of some other fact or
19 facts.

20 I'll give you an example. You go to bed one
21 night when it's not raining. When you wake up in the
22 morning you look out your window, you do not see rain
23 but you see that the street and sidewalk are wet and
24 that people are wearing raincoats and carrying
25 umbrellas. Under those circumstances, it may be

1 reasonable to infer or conclude that it had rained
2 during the night.

3 In other words, the fact of rain during the
4 night is an inference that might be drawn from the
5 proven facts of the presence of the water on the street
6 and sidewalk and the people in raincoats carrying
7 umbrellas. An inference must only be drawn from a
8 proven fact or facts and then only if the inference
9 flows naturally, reasonably, and logically from the
10 proven fact or facts, not if it is speculative.

11 Therefore, in deciding whether to draw an
12 inference, you must look and consider all the facts in
13 the light of reason, common sense and experience.

14 Among the exhibits received in evidence were
15 photographs introduced by the prosecution. These
16 photographs purport to depict various locations or
17 objects relevant to the issues in the case. They were
18 received in evidence to assist you in making your
19 evaluation of the testimony relating to the locations,
20 scenes or objects depicted therein. You are the sole
21 judges of the accuracy of these exhibits and you are the
22 sole judges of the weight to be given such exhibits.

23 Now, the Court permitted the introduction of
24 two orders of protection for a strictly limited purpose.
25 You will remember Ms. Sarita Johnson's testimony

1 regarding the issuance of the protective orders. The
2 orders of protection were admitted only to allow you to
3 evaluate Ms. Sarita Johnson's credibility regarding the
4 timing and circumstances of Mr. Ross' departure from the
5 household at 301 Coventry Road, Hempstead. You are to
6 consider this particular evidence only in the light of
7 Ms. Johnson's responses when she was questioned and only
8 insofar as her responses reveal her credibility, if it
9 does, as demonstrated by the evidence and for no other
10 purpose.

11 The Court has received in evidence certain
12 business records from Sprint PCS. You may consider
13 these records together with all the other proof in the
14 case in determining the issues presented you for your
15 final determination.

16 During the course of the trial you may have
17 heard colloquy or conversation between the Court and
18 counsel. Bear in mind such exchanges between the Court
19 and counsel do not constitute evidence and must be
20 disregarded by you in your deliberations.

21 We now turn to the fundamental principles of
22 law that apply in all criminal cases, the presumption of
23 innocence, the burden of proof and the requirement of
24 proof beyond a reasonable doubt.

25 Throughout these proceedings, the defendant is

1 presumed to be innocent. As a result, as you deliberate
2 on each count, you must find that the defendant is not
3 guilty unless, on the evidence presented at this trial,
4 you conclude that the People have proven the defendant
5 guilty beyond a reasonable doubt as to every element of
6 the crime.

7 The defendant is not required to prove that he
8 is not guilty. In fact, the defendant is not required
9 to prove or disprove anything, as you know. To the
10 contrary, the People have the burden of proving the
11 defendant guilty beyond a reasonable doubt. The burden
12 of proof never shifts from the People to the defendant.
13 If the People fail to satisfy their burden of proof, you
14 must find the defendant not guilty. If the People
15 satisfy their burden of proof, you must find the
16 defendant guilty.

17 Now what does our law mean when it requires
18 proof of guilt beyond a reasonable doubt? The law uses
19 the term proof beyond a reasonable doubt to tell you how
20 convincing the evidence of guilt must be to permit a
21 verdict of guilty.

22 The law recognizes that in dealing with human
23 affairs, there are very few things in this world that we
24 know with absolute certainty. Therefore, the law does
25 not require the People to prove a defendant guilty

1 beyond all possible doubt.

2 On the other hand, it's not sufficient to
3 prove that the defendant is probably guilty.

4 A reasonable doubt is an honest doubt of the
5 defendant's guilt for which a reason exists based upon
6 the nature and quality of the evidence. It's an actual
7 doubt that a reasonable person, acting in a matter of
8 this importance, would be likely to have because of the
9 evidence that was presented or because of the lack of
10 convincing evidence.

11 Now, proof of guilt beyond a reasonable doubt
12 is proof that leaves you so firmly convinced of the
13 defendant's guilt that you have no reasonable doubt of
14 the existence of any element of the crime or of the
15 defendant's identity as the person who committed the
16 crime.

17 In making your determinations, you should be
18 guided solely by a full and fair evaluation of the
19 evidence. After carefully evaluating the evidence, each
20 of you must decide whether or not that evidence
21 convinces you beyond a reasonable doubt of the
22 defendant's guilt.

23 Whatever your verdict may be, it must not rest
24 upon baseless speculations, nor may it be influenced in
25 any way by bias, prejudice, sympathy or by a desire to

1 bring to an end your deliberations or to avoid an
2 unpleasant duty. If you are not convinced beyond a
3 reasonable doubt that the defendant is guilty of a
4 charged crime, you must find the defendant not guilty of
5 the crime. If you are convinced beyond a reasonable
6 doubt that the defendant is guilty of a charged crime,
7 you must find the defendant guilty of that crime.

8 As judges of the facts, you alone determine
9 the truthfulness and accuracy of the testimony of each
10 witness presented. You must decide whether a witness
11 told the truth and was accurate or, instead, testified
12 falsely or was mistaken. You must also decide what
13 importance to give to the testimony you accept as
14 truthful and accurate.

15 It is the quality of the testimony that is
16 controlling, not the number of witnesses who testify.

17 If you find that any witness has intentionally
18 testified falsely to any material fact, you may
19 disregard that witness's entire testimony or you may
20 disregard so much of it as you find was untruthful and
21 accept so much of it as you find to have been truthful
22 and accurate.

23 There is no particular formula for evaluating
24 the truthfulness and accuracy of another person's
25 statements or testimony. You bring to this process all

1 of your varied experiences. In life you frequently
2 decide the truthfulness and accuracy of statements made
3 to you by other people. The same factors used to make
4 those decisions should be used in this case when
5 evaluating the testimony.

6 Some of the factors you may wish to consider
7 in evaluating the testimony of a witness are as follows:

8 Did the witness have the opportunity to see or
9 hear the events about which he or she testified?

10 Did the witness have the ability to recall
11 those events accurately?

12 Was the testimony of the witness plausible and
13 likely to be true, or was it implausible and not likely
14 to be true?

15 Was the testimony of the witness consistent or
16 inconsistent with other testimony or evidence in the
17 case?

18 Did the manner in which the witness testified
19 reflect upon the truthfulness of that witness's
20 testimony?

21 To what extent, if any, did the witness's
22 background, training, education or experience affect the
23 believability of that witness's testimony?

24 Did the witness have a bias, hostility or some
25 other attitude that affected the truthfulness of the

1 witness's testimony?

2 You may consider whether a witness had or did
3 not have a motive to lie. If a witness had a motive to
4 lie, you may consider whether and to what extent, if
5 any, that motive affected the truthfulness of that
6 witness's testimony.

7 If a witness did not have a motive to lie, you
8 may consider that as well in evaluating the witness's
9 truthfulness.

10 You may consider whether a witness had any
11 interest in the outcome of the case or, instead, whether
12 a witness has no such interest.

13 You are not required to reject the testimony
14 of an interested witness or accept the testimony of a
15 witness who has no interest in the outcome of the case.
16 You may, however, consider whether an interest in the
17 outcome or the lack of such interest affected the
18 truthfulness of the witness's testimony.

19 Now, although not required to do so, the
20 defendant in this case testified on his own behalf. His
21 testimony should be considered by you as you would the
22 testimony of any other witness. A defendant, of course,
23 is an interested witness, interested in the outcome of
24 the trial. You may, as jurors, wish to keep such
25 interest in mind in determining the weight and

1 credibility to be given to his testimony. You should
2 not, however, reject the testimony of the defendant
3 merely because of his interest. It is your duty, as in
4 the case of all witnesses, to accept such testimony of
5 the defendant you believe to be truthful and reject only
6 such testimony you believe to be false.

7 You may consider whether a witness made
8 statements at this trial that are inconsistent with each
9 other. You may also consider whether a witness made
10 previous statements that are inconsistent with his or
11 her testimony at trial.

12 If a witness made such inconsistent
13 statements, you may consider whether and to what extent
14 they affect the truthfulness or accuracy of that
15 witness's testimony here at this trial.

16 The contents of a prior inconsistent statement
17 are not proof of what happened. You may use the
18 evidence of a prior inconsistent statement only to
19 evaluate the truthfulness or accuracy of the witness's
20 testimony here at trial. You may consider whether a
21 witness's testimony is consistent with the testimony of
22 other witnesses or with other evidence in the case.

23 If there were inconsistencies by or among
24 witnesses, you may consider whether they are significant
25 inconsistencies related to important facts or, instead,

1 were the kind of minor inconsistencies that one might
2 expect from multiple witnesses to the same event.

3 In this case you heard the testimony of a
4 police officer. The testimony of a witness should not
5 be believed solely and simply because the witness is a
6 police officer. At the same time, a witness's testimony
7 should not be disbelieved solely and simply because the
8 witness is a police officer. You evaluate a police
9 officer's testimony in the same way you would evaluate
10 the testimony of any other witness.

11 You will recall that Mr. Josh Hanson testified
12 about issues relating to forensic interviewing, child
13 sexual abuse and sexual perpetration and gave an opinion
14 on such matters. Ordinarily a witness is limited to
15 testifying about facts and is not permitted to give an
16 opinion. Where, however, specialized knowledge might
17 help the jury understand evidence, a witness with
18 expertise in the specialized field may render opinions
19 about such matters. The expert's testimony is not
20 offered as proof that the crime -- that the charged
21 crimes occurred, it is offered for you to consider in
22 evaluating the complainant's behavior before, during or
23 after the alleged commission of the crime.

24 You should evaluate the expert's testimony
25 just as you would the testimony of any other witness.

1 You may accept or reject such testimony in whole or in
2 part just as you may with respect to the testimony of
3 any other witness.

4 In deciding whether or not to accept such
5 testimony, you may consider the following:

6 The qualifications and believability of the
7 witness.

8 The facts and other circumstances upon which
9 the witness's opinion was based.

10 The reasons given for the witness's opinion
11 and whether the witness's opinion is consistent or
12 inconsistent with the other evidence.

13 You have also heard testimony about the
14 lawyers speaking to a witness about the case before the
15 witness testified at trial. The law permits the lawyers
16 to speak to a witness about the case before the witness
17 testifies and permits a lawyer to review with the
18 witness the questions that will or may be asked at
19 trial, including the questions that may be asked on
20 cross-examination.

21 You have also heard that a witness -- excuse
22 me.

23 Speaking to a witness about his or her
24 testimony and permitting the witness to review materials
25 pertaining to the case before the witness testifies is a

1 normal part of preparing for trial. It's simply not
2 improper. Of course, in the process of trial
3 preparation, a lawyer may not suggest that the witness
4 depart from the truth.

5 I will now instruct you on the law applicable
6 to the charged crimes. As I do this, you will hear me
7 state the elements of each charged crime submitted for
8 your consideration.

9 The first count is course of sexual conduct
10 against a child in the first degree.

11 As applied to this case, under our law, a
12 person is guilty of course of sexual conduct against a
13 child in the first degree when, over a period of time
14 not less than three months in duration, he or she, being
15 18 years or more, engages in two or more acts of sexual
16 conduct which includes at least one act of oral sexual
17 conduct with a child less than 13-years-old.

18 Under our law, it is also an element of this
19 offense that the sexual conduct was committed without
20 the consent of such child. Sexual conduct takes place
21 without a child's consent when that child is deemed, by
22 law, to be incapable of consent.

23 Under our law, a child is deemed incapable of
24 consenting to sexual conduct when he or she is less than
25 13-years-old.

1 Thus, the law deems sexual conduct with such
2 child to be without that child's consent even if, in
3 fact, the child did consent.

4 It is not a defense to this charge that the
5 actor did not know that the person with whom the actor
6 engaged in sexual conduct was less than 13-years-old or
7 that the actor believed such person was 13-years-old or
8 more on the date of the crime.

9 The terms sexual conduct, oral sexual conduct
10 and sexual contact used in this definition have their
11 own special meaning in our law. I will now give you the
12 meaning of these terms.

13 Sexual conduct means oral sexual conduct or
14 sexual contact.

15 Oral sexual conduct means conduct between
16 persons consisting of contact between the mouth and the
17 vulva or vagina.

18 Sexual contact means any touching of the
19 sexual or other intimate parts of a person not married
20 to the actor for the purpose of gratifying sexual desire
21 of either party. It includes the touching of the actor
22 by the victim, as well as the touching of the victim by
23 the actor, whether directly or through clothing.

24 In order for you to find the defendant guilty
25 of this crime, the People are required to prove from all

1 the evidence in the case beyond a reasonable doubt each
2 of the following three elements:

3 That over a period of time not less than three
4 months in duration, namely, on or about and between
5 March 1, 2013 through December 29, 2013 in the County of
6 Nassau, the defendant, Ray Ross, being 18-years-old or
7 more, engaged in two or more acts of sexual conduct with
8 Millinia Johnson;

9 That such sexual conduct included at least one
10 act of oral sexual conduct; and

11 Three, that Millinia Johnson was less than
12 13-years-old.

13 If you find the People have proven beyond a
14 reasonable doubt each of these elements that I have just
15 spoken about, you must find the defendant guilty of the
16 crime of course of sexual conduct against a child in the
17 first degree as charged in count one.

18 On the other hand, if you find that the People
19 have not proven beyond a reasonable doubt any one or
20 more of those elements, you must find the defendant not
21 guilty of the crime of course of sexual conduct against
22 a child in the first degree as charged in count one.

23 The second count is course of sexual conduct
24 against a child in the second degree. I'll explain in
25 more detail in a little bit.

1 You will consider this count if and only if
2 you have found the defendant not guilty under count one.

3 Under our law, a person is guilty of course of
4 sexual conduct against a child in the second degree
5 when, over a period of time not less than three months
6 in duration, he or she being 18 years or more, engages
7 in two or more acts of sexual conduct with a child less
8 than 13-years-old.

9 Again, it is also an element of this offense
10 that the sexual conduct was committed without the
11 consent of such child.

12 As with count one, sexual conduct takes place
13 without a child's consent when that child is deemed, by
14 law, to be incapable of consent.

15 The instructions previously provided on this
16 element regarding age of consent, as well as the
17 definition of the terms sexual conduct and sexual
18 contact that I have given you under count one apply
19 similarly to count two.

20 In order for you to find the defendant guilty
21 of this crime, the People are required to prove from all
22 the evidence in the case beyond a reasonable doubt both
23 of the following two elements:

24 That over a period of time not less than three
25 months in duration, namely, on or about and between

1 March 1, 2013 through December 29, 2013 in the County of
2 Nassau, the defendant, Ray Ross, being 18-years-old or
3 more, engaged in two or more acts of sexual conduct with
4 Millinia Johnson and that Millinia Johnson was less than
5 13-years-old.

6 If you find that the People have proven beyond
7 a reasonable doubt both of the elements, you must find
8 the defendant guilty of the crime of course of sexual
9 conduct against a child in the second degree as charged
10 in count two.

11 If you find that the People have not proven
12 beyond a reasonable doubt either one or both of the
13 elements, you must find the defendant not guilty of the
14 crime of course of sexual conduct against a child in the
15 second degree as charged in count two.

16 Now, counts three and four charge endangering
17 the welfare of a child under separate and different
18 periods of time as I'll explain in a moment.

19 Under our law, a person is guilty of
20 endangering the welfare of a child when that person
21 knowingly acts in a manner likely to be injurious to the
22 physical, mental or moral welfare of a child less than
23 17-years-old.

24 A person knowingly acts in a manner likely to
25 injurious to the physical, mental or moral welfare of a

1 child when that person is aware that he or she is acting
2 in such a manner. Actual harm to the child need not
3 result. The defendant's conduct need not be
4 specifically directed at a child.

5 The defendant must act in a manner which is
6 likely to be injurious to the physical, mental or moral
7 welfare of a child knowing of the likelihood of such
8 injury. Knowledge of the age of the child is not an
9 element of this crime and it is not a defense to this
10 charge that the defendant did not know the age of the
11 child or believed the age of the child to be 17 years or
12 more.

13 In order for you to find the defendant guilty
14 of count three, the People are required to prove from
15 all the evidence in the case beyond a reasonable doubt
16 each of the following three elements:

17 That on or about and between March 1, 2013 and
18 December 29, 2013 in the County of Nassau, the
19 defendant, Ray Ross, acted in a manner likely to be
20 injurious to the physical, mental or moral welfare of
21 Millinia Johnson;

22 That the defendant did so knowingly; and

23 That Millinia Johnson was less than
24 17-years-old.

25 If you find that the People have proven beyond

1 a reasonable doubt each of the three elements, you must
2 find the defendant guilty of the crime of endangering
3 the welfare of a child under this count.

4 On the other hand, if you find that the People
5 have not proven beyond a reasonable doubt any one or
6 more of the elements, you must find the defendant not
7 guilty of the crime of endangering the welfare of a
8 child as charged in count three.

9 Moving to count four, all my instructions
10 apply similarly as I recited for count three.

11 So, in order for you to find the defendant
12 guilty of endangering the welfare of a child under count
13 four, the People are required to prove from all the
14 evidence in the case beyond a reasonable doubt each of
15 the following three elements:

16 That on or about and between December 30, 2013
17 and October 17, 2014 in the County of Nassau, the
18 defendant, Ray Ross, acted in a manner likely to be
19 injurious to the physical, mental or moral welfare of
20 Millinia Johnson;

21 That the defendant did so knowingly; and

22 Finally, that Millinia Johnson was less than
23 17-years-old.

24 If you find that the People have proven beyond
25 a reasonable doubt each of these elements, you must find

1 the defendant guilty of the crime of endangering the
2 welfare of a child under count four.

3 On the other hand, if you find that the People
4 have not proven beyond a reasonable doubt any one or
5 more of these elements, you must find the defendant not
6 guilty of the crime of endangering the welfare of a
7 child as charged in count four.

8 Now, your verdict on each count you consider,
9 whether guilty or not guilty, must be unanimous. That
10 is, each and every juror must agree to it.

11 To reach a unanimous verdict, you must
12 deliberate with the other jurors. That means you should
13 discuss the evidence and consult with each other, listen
14 to each other, give each other's views, careful
15 consideration and reason together when considering the
16 evidence. And when you deliberate, you should do so
17 with a view towards reaching an agreement if that can be
18 done without surrendering your individual judgment.

19 Each of you must decide this case for yourself
20 but only after a fair and impartial consideration of the
21 evidence with the other jurors. You should not
22 surrender an honest view of the evidence simply because
23 you want the trial to end or you are outvoted. At the
24 same time, you should not hesitate to reexamine your
25 views and change your mind if you become convinced that

1 your position was not correct.

2 As I have previously instructed, you may see
3 any or all of the exhibits which were received in
4 evidence. Simply write me a note telling me which
5 exhibit or exhibits you want to see.

6 You may also have the testimony of any witness
7 read back to you in whole or in part. Again, if you
8 want a read back, just write me a note telling me what
9 testimony you wish to hear. I just ask you to be as
10 specific as possible when you send that note out so that
11 the court reporter can hone in on exactly what you are
12 asking for.

13 If you are interested in hearing only a
14 portion of the witness's testimony, please specify in
15 your note which witness and with as much detail as
16 possible which part of the testimony you want to hear.
17 I just said that to you.

18 If you have a question on the law, write me a
19 note specifying what you want me to review with you.
20 That goes to my final instructions. I know it was long
21 and laborious and I speak at one level and one tone, so
22 if you need any instructions on the law, just ask me
23 what you need to be read back.

24 Now, as you know, the first juror selected is
25 known as the foreperson. During deliberations the

1 foreperson's opinion and vote are not entitled to any
2 more importance than that of any other juror. What we
3 ask of the foreperson is to sign any written note that
4 the jury sends to the Court. The foreperson does not
5 have to write the note or agree with its contents. The
6 foreperson's signature only indicates that the writing
7 is coming from the jury.

8 When the jury has reached a verdict, guilty or
9 not guilty, the entire jury will be asked to come back
10 into Court. The foreperson will be asked whether the
11 jury has reached a verdict. If the foreperson says yes,
12 he will then be asked what the verdict is for each
13 charged crime considered in accordance with my
14 instructions. After that, the entire jury will be asked
15 whether that is their verdict and they will answer yes
16 or no.

17 Finally, upon the request of a party, each
18 juror will be asked individually whether the announced
19 verdict is the verdict of that juror and then upon being
20 asked, each juror will give an answer, yes or no.

21 Now, as you go in to begin your deliberations,
22 I will give you a form known as a verdict sheet. The
23 verdict sheet lists each count submitted for your
24 consideration and the manner in which you are to
25 consider the counts and the possible verdicts. Please

1 use the form to record your verdict with an X or a check
2 mark in the appropriate place.

3 In addition to listing the counts, I have
4 added the applicable periods of time on the verdict
5 sheet in order for you to distinguish between counts
6 three and four. You may have heard there are different
7 periods of time as I have explained. The sole purpose
8 of doing so is to distinguish between those counts.
9 It's not a substitute for my full instructions on the
10 meanings and elements of each charge and it should not
11 discourage you from asking me to define a crime again if
12 a question arises in regard to it.

13 There are instructions for you as you move
14 down each count. Please follow those instructions that
15 are on the verdict sheet.

16 Finally, there are a few remaining rules that
17 you must observe during your deliberations. First, a
18 court officer will collect all electronic devices from
19 you to hold while you are in deliberations.

20 While you are here in the courthouse
21 deliberating on the case, you will be kept together in
22 the jury room. You may not leave the jury room during
23 deliberations.

24 Now, as you have seen already, lunch,
25 unfortunately, will not be provided. That's a long ago

1 courtesy that is now no longer. If tomorrow you are
2 still deliberating and lunchtime comes, you will be
3 called back from your deliberations and we'll break for
4 lunch. I'll give you your admonitions you are not to
5 discuss the case, et cetera and have no contact with
6 anyone associated with the case, whether you see them in
7 the hallways or not, and you will go to lunch. You will
8 then come back again and you will start your
9 deliberations or continue your deliberations.

10 The second rule, you must deliberate about the
11 case only when you are all gathered together in the jury
12 room. You must not, for example, be discussing the case
13 as you go to and from the courtroom. It is important
14 that each juror have the opportunity to hear whatever
15 another juror has to say about the case and that, by
16 law, must only be done when you are all gathered
17 together in the jury room. Thus, if for any reason all
18 12 of you are not gathered together in the jury room,
19 stop deliberating and wait until all 12 are present once
20 again in the jury room.

21 During your deliberations you must discuss the
22 case only amongst yourselves. You must not discuss the
23 case with anyone else, including a court officer or
24 permit anyone other than a fellow juror to discuss the
25 case in your presence.

1 If you have a question or request, you must
2 communicate with me by writing a note which you will
3 give to the court officer who will give it to me. The
4 law requires that you communicate with me in writing in
5 part to make sure that there are no misunderstandings as
6 to what you are asking for.

7 I should explain that under our law, I am not
8 permitted to have a conversation about the facts of the
9 case or possible verdict or vote of the jury on any
10 count with any one juror or a group of jurors or even
11 all the jurors through a note. Thus, in any note that
12 you send me, do not tell me what the vote of the jury is
13 on any count.

14 Could I see counsel for a second?

15 (A discussion was held off the record.)

16 THE COURT: I'm going to finish up here in
17 just a moment. I want to address our sole alternate
18 juror because she is special. Since our trial jury of
19 12 is about to retire to its deliberations, I now charge
20 and emphasize there must be no further communication or
21 contact between the jury of 12 and our alternate juror.
22 Our alternate juror will be provided with a convenient
23 and private room to hang out in, if you will, to await
24 the rendition of the trial jury's verdict. As an
25 alternate juror you are not to discuss the case with

1 anyone. You are not to read anything about the case.
2 You are not to permit anyone to discuss it with you or
3 in your presence. Nor are you to form any opinion as to
4 the factual issues in the case, which means you are not
5 to start deliberating in any way, shape or fashion or
6 express an opinion as to the guilt or innocence of the
7 defendant unless and until such time as you may be
8 requested to participate in the trial jury's
9 deliberations for whatever reason. And if that should
10 happen, I'll give the entire jury further instructions
11 on how you must move forward.

12 So, I have now outlined for you the rules of
13 law applicable to this case and the processes by which
14 you are to weigh the evidence and to determine the
15 facts. In a few minutes you will retire to the jury
16 room for your deliberations. Your function is an
17 important one. Remember, the People, the defendant and
18 the Court all rely upon you to give full and
19 conscientious deliberation and consideration to the
20 issues and evidence before you. By doing so, you carry
21 out to the fullest your oaths as jurors to well and
22 truly try the issues of this case and to render a true
23 verdict.

24 You will now retire to your deliberations.
25 Please follow the directions of our court officer.

1 (Whereupon, the sworn jury of twelve exited
2 the courtroom to begin deliberations and the alternate
3 juror exited the courtroom as well.)

4 THE COURT: Mr. Zerner, with reference to your
5 alerting the Court that I said tomorrow in speaking to
6 the jurors, and, of course, we're not in session
7 tomorrow, I'll address that at the close of business
8 today.

9 MR. ZERNER: Thank you, your Honor.

10 THE COURT: You're welcome. Okay, please stay
11 by so that you can be returned to Court, should it be
12 necessary.

13 MR. ZERNER: Yes, your Honor.

14 (Whereupon, the Court stood in recess while
15 awaiting a verdict.)

16 THE CLERK: Continued case on trial, People v.
17 Ray Ross. All parties are present. The jury is not.
18 Are the People ready?

19 MR. PERRI: Yes, your Honor.

20 THE CLERK: Defense ready?

21 MR. ZERNER: We are, thank you.

22 THE COURT: Very good. It's now 4:30. We're
23 about to break for the day. The Court received two
24 notes I would like to bring to counsel's attention.
25 Court Exhibit XI, first note from the jury requesting

1 evidence. Both packets of the text messages, all phone
2 logs, photos of parking lots. They were delivered to
3 the jury as consented to by counsel without the
4 necessity of notifying counsel.

5 Court Exhibit XII from the jury simply
6 indicates that they were done for the day. We, the
7 jury, are in discussions but have not come to any
8 unanimous decision on any of the counts. We are ready
9 to resume our deliberations Thursday, 2/25. TY. I
10 guess that's a shorthand way of saying thank you.

11 COURT OFFICER: Jury entering.

12 (Whereupon, the jury entered the courtroom.)

13 THE CLERK: Let the record reflect the
14 presence of the jury. All parties are present.

15 People ready?

16 MR. PERRI: Yes, your Honor.

17 THE CLERK: Defense ready?

18 MR. ZERNER: We are, thank you.

19 THE COURT: Good afternoon, ladies and
20 gentlemen of the jury. Today's Court session is drawing
21 to a close and I am about to excuse you for the day.
22 You will return Thursday morning at the place designated
23 by the court officer. I think you all know where that
24 is to be at a time early enough so that you can begin
25 your deliberations at 9:30 a.m. Be ready to begin the

1 continuance of your deliberations at 9:30 a.m.

2 The law requires that before I excuse you, I
3 review with you the rules that you must follow over the
4 course of this recess. As you know, the rules are
5 designed to guarantee the parties a fair trial. They
6 are the same ones that you were required to follow prior
7 to deliberations. The law requires that I restate them
8 at this stage in order to emphasize their importance.
9 The reason for the emphasis is that you are now in a
10 critical stage. You are in the process of deliberations
11 and you are not being sequestered. That means that you
12 are not being kept together overnight where the Court
13 could have greater assurance that you are following the
14 rules. You are being permitted to go home after
15 deliberations have begun. There may now be a greater
16 temptation, for example, to discuss the case with
17 someone else or to go to the scene. Please resist these
18 temptations.

19 To discuss the case with someone else or to
20 visit the scene or to violate any of the other
21 admonitions I have explained to you would not only
22 violate my order, but would also violate the oath that
23 you took to follow the rules.

24 So here are the rules:

25 Deliberations must be conducted only in the

1 jury room when all jurors are present. All
2 deliberations must now cease and are not to be resumed
3 until all of you have returned on Thursday and are
4 together again in the jury room.

5 Don't converse either among yourselves or with
6 anyone else about anything related to the case during
7 the recess.

8 You remain under the obligation not to
9 request, accept, agree to accept or discuss with any
10 person the receiving or accepting of any payment or
11 benefit in return for supplying any information
12 concerning the trial.

13 Promptly report to me any incident within your
14 knowledge involving an attempt by any person to
15 improperly influence you or any member of the jury.

16 Don't visit or view the premises or place
17 where the charged crime was allegedly committed or any
18 other places or premises involved in the case.

19 Don't read, view, listen to any accounts or
20 discussions of the case reported by newspapers or any
21 other news media.

22 Don't attempt to research any fact, issue or
23 person related to this case, whether by discussion with
24 others, by research in a library or on the Internet or
25 by any other means or source.

1 You understand and I'm confident you will
2 comply with those instructions and, therefore, I release
3 you for the day and we'll see you Thursday morning.

4 (Whereupon, the jury exited the courtroom.)

5 THE COURT: Okay, Counsel, Thursday morning.

6 (Whereupon, the trial was adjourned to
7 February 25, 2016.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : PART 47

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK

5 -against-

Ind. No. 1050N/15

6 JURY TRIAL

7 RAY ROSS,

8 DEFENDANT.

9 -----X
10 Mineola, New York
11 February 25, 2016

12 B E F O R E: HON. TERENCE P. MURPHY
13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (Same as previously noted)

16
17 Kathi A. Fedden
18 Official Court Reporter

19 *

20 *

21 *

22 (Whereupon, the jury entered the courtroom.)

23 THE CLERK: Continued case on trial, People v.
24 Ray Ross. The jury is present. All parties are
25 present, as is Mr. Ross.

Kathi A. Fedden, Sr. Court Reporter

1 Are the People ready to proceed at this time?

2 MR. PERRI: Yes, your Honor.

3 THE CLERK: Defense ready?

4 MR. ZERNER: We are, thank you.

5 THE COURT: Good morning, ladies and gentlemen
6 of the jury. Welcome back. I received two notes from
7 you. As required by law, I have to read those notes
8 into the record. So the first note was received or
9 timed at 10:20 a.m. this date and it's Court Exhibit
10 VIII [sic]. It says, We, the jury, request the judge
11 explain all four counts again now that we have spoken so
12 we can evaluate each count before we decide. Thank you.

13 Secondly, upon return to the jury room, we
14 request the signed detective's statement and all of
15 Millinia's testimony.

16 With regard to this note, I will read you all
17 four counts, okay.

18 With regard to the signed detective statement,
19 that statement was not received in evidence, so if you
20 will recall my instructions, if an item was not received
21 in evidence, you can't see it or take it into the jury
22 room, but you can have any testimony regarding that
23 statement read back to you, if necessary. So, you can
24 send me another note if that's an issue for you.

25 Then with regard to Millinia's testimony, the

1 court reporter has recovered that for you. It's 240
2 pages or so, so it's a significant amount of pages that
3 will have to be read by the court reporter. In that
4 vein, we have it ready to be read for you and we'll
5 probably do that right after the lunch hour, okay,
6 because that's the easiest way to do it.

7 And, of course, I have instructed you
8 previously in my final instructions that if there is
9 some part of testimony that you wish to be read back, we
10 can read that back to you, as you requested Millinia's.
11 If there is a particular aspect of it, it's up to you,
12 in your deliberations, you can more particularly specify
13 that to the Court in a note, okay.

14 With regard to the second note received at
15 12:00 p.m., We, the jury, would also accept a written
16 transcript of the counts or a reread of the counts
17 before the asked evidence. That's what we're going to
18 do now. I couldn't do that for you before because our
19 court reporter was engaged in her other business.

20 So let me read for you now the four counts.
21 The first count is course of sexual conduct against a
22 child in the first degree.

23 As applied to this case, under our law, a
24 person is guilty of course of sexual conduct against a
25 child in the first degree when, over a period of time

1 not less than three months in duration, he or she being
2 18 years or more, engages in two or more acts of sexual
3 conduct which includes at least one act of oral sexual
4 conduct with a child less than 13-years-old.

5 Under our law, it's also an element of this
6 offense that the sexual conduct was committed without
7 the consent of such child. Sexual conduct takes place
8 without a child's consent when that child is deemed, by
9 law, to be incapable of consent.

10 Under our law, a child is deemed incapable of
11 consenting to sexual conduct when he or she is less than
12 13-years-old. Thus, the law deems sexual conduct with
13 such child to be without that child's consent even if,
14 in fact, the child did consent.

15 It is not a defense to this charge that the
16 actor did not know that the person with whom the actor
17 engaged in sexual conduct was less than 13-years-old or
18 that the actor believed such person was 13-years-old or
19 more on the date of the crime.

20 The term sexual conduct, oral sexual conduct
21 and sexual contact used in this definition have their
22 own special meaning in our law. I will now give you the
23 meaning of these terms:

24 Sexual conduct means oral sexual conduct or
25 sexual contact.

1 Oral sexual conduct means conduct between
2 persons consisting of contact between the mouth and the
3 vulva or vagina.

4 Sexual contact means any touching of the
5 sexual or other intimate parts of a person not married
6 to the actor for the purpose of gratifying sexual desire
7 of either party. It includes the touching of the actor
8 by the victim, as well as the touching of the victim by
9 the actor, whether directly or through clothing.

10 In order for you to find the defendant guilty
11 of this crime, the People are required to prove from all
12 the evidence in the case beyond a reasonable doubt each
13 of the following three elements:

14 That over a period of time not less than three
15 months in duration, namely, on or about and between
16 March 1, 2013 and December 29, 2013 in the County of
17 Nassau, the defendant, Ray Ross, being 18-years-old or
18 more, engaged in two or more acts of sexual conduct with
19 Millinia Johnson;

20 That such sexual conduct included at least one
21 act of oral sexual conduct; and

22 That Millinia Johnson was less than
23 13-years-old.

24 If you find the People have proven beyond a
25 reasonable doubt each of the elements, you must find the

1 defendant guilty of the crime of course of sexual
2 conduct against a child in the first degree.

3 On the other hand, if you find that the People
4 have not proven beyond a reasonable doubt any one or
5 more of these elements, you must find the defendant not
6 guilty of the crime of course of sexual conduct against
7 a child in the first degree.

8 The second count is course of sexual conduct
9 against a child in the second degree.

10 As you will recall, I instructed you that you
11 will consider this count if and only if you have found
12 the defendant not guilty under count one.

13 Under our law, a person is guilty of course of
14 sexual conduct against a child in the second degree
15 when, over a period of time not less than three months
16 in duration, he or she being 18 years or more, engages
17 in two or more acts of sexual conduct with a child less
18 than 13-years-old. It is also an element of this
19 offense that the sexual conduct was committed without
20 the consent of such child.

21 As with count one, sexual conduct takes place
22 without a child's consent when that child is deemed, by
23 law, to be incapable of consent.

24 The instructions previously provided on this
25 element regarding age of consent, as well as the

1 definition of the terms sexual conduct, oral sexual
2 conduct and sexual contact that I have given you under
3 count one apply similarly to count two.

4 In order for you to find the defendant guilty
5 of this crime, the People are required to prove from all
6 the evidence in the case beyond a reasonable doubt both
7 of the following two elements:

8 That over a period of time not less than three
9 months in duration, namely, on or about and between
10 March 1, 2013 and December 29, 2013 in the County of
11 Nassau, the defendant, Ray Ross, being 18 years old or
12 more, engaged in two or more acts of sexual conduct with
13 Millinia Johnson; and

14 That Millinia Johnson was less than
15 13-years-old.

16 If you find that the People have proven beyond
17 a reasonable doubt both of those elements, you must find
18 the defendant guilty of the crime of course of sexual
19 conduct against a child in the second degree.

20 On the other hand, if you find that the People
21 have not proven beyond a reasonable doubt either one or
22 both of those elements, you must find the defendant not
23 guilty of the crime of course of sexual conduct against
24 a child in the second degree.

25 Counts three and four charge endangering the

1 welfare of a child under separate and different periods
2 of time as I will explain in a moment.

3 Under our law, a person is guilty of
4 endangering the welfare of a child when that person
5 knowingly acts in a manner likely to be injurious to the
6 physical, mental or moral welfare of a child less than
7 17-years-old.

8 The term knowingly has its own special meaning
9 in our law. I will now give you the meaning of that
10 term.

11 A person knowingly acts in a manner likely to
12 be injurious to the physical, mental or moral welfare of
13 a child when that person is aware that he or she is
14 acting in such a manner. Actual harm to the child need
15 not result. The defendant's conduct need not be
16 specifically directed at a child. The defendant must
17 act in a manner which is likely to be injurious to the
18 physical, mental or moral welfare of a child knowing of
19 the likelihood of such injury.

20 Knowledge of the age of the child is not an
21 element of this crime and it is not a defense to this
22 charge that the defendant did not know the age of the
23 child or believed the age of the child to be 17 years or
24 more.

25 In order for you to find the defendant guilty

1 under count three, the People are required to prove from
2 all the evidence in this case beyond a reasonable doubt
3 each of the following three elements:

4 That on or about and between March 1, 2013 and
5 December 29, 2013 in the County of Nassau, the
6 defendant, Ray Ross, acted in a manner likely to be
7 injurious to the physical, mental or moral welfare of
8 Millinia Johnson;

9 That the defendant did so knowingly; and

10 That Millinia Johnson was less than
11 17-years-old.

12 If you find the People have proven beyond a
13 reasonable doubt each of those elements, you must find
14 the defendant guilty of the crime of endangering the
15 welfare of a child as charged in count three.

16 On the other hand, if you find that the People
17 have not proven beyond a reasonable doubt any one or
18 more of those elements, you must find the defendant not
19 guilty of the crime of endangering the welfare of a
20 child as charged in this count.

21 Under count four, in order for you to find the
22 defendant guilty of endangering the welfare of a child,
23 the People are required to prove from all the evidence
24 in the case beyond a reasonable doubt each of the
25 following three elements:

1 That on or about and between December 30, 2013
2 and October 17, 2014 in the County of Nassau, the
3 defendant, Ray Ross, acted in a manner likely to be
4 injurious to the physical, mental or moral welfare of
5 Millinia Johnson;

6 That the defendant did so knowingly; and
7 That Millinia Johnson was less than
8 17-years-old.

9 Therefore, if you find that the People have
10 proven beyond a reasonable doubt each of these elements,
11 you must find the defendant guilty of the crime of
12 endangering the welfare of a child under count four.

13 On the other hand, if you find that the People
14 have not proven beyond a reasonable doubt any one or
15 more of the elements, you must find the defendant not
16 guilty of the crime of endangering the welfare of a
17 child as charged under count four.

18 So, ladies and gentlemen, there are the four
19 counts that you have asked for and the elements set
20 forth for those counts. What we'll do now is I'll
21 return you back to the jury room. You will deliberate
22 about ten minutes. I'll give you the opportunity to
23 send out another note, if you so desire, and then we'll
24 have to break for lunch so I'll give you your
25 admonitions once again.

1 We'll break for lunch approximately an hour.

2 We'll get started again at 2:00 p.m., okay.

3 (Whereupon, the sworn jury of twelve exited
4 the courtroom to continue deliberations.)

5 THE COURT: Counsel, just for the record, I
6 referred to the first note as Court Exhibit VIII. Well,
7 my Roman numeral interpretation is lacking. It's
8 actually Court Exhibit XIII and the second note is Court
9 Exhibit XIV.

10 So, about ten minutes. We'll have to recall
11 them to break for lunch as required by Court rules and
12 we'll get started again at 2:00 p.m.

13 Any objection to the Court's instructions on
14 those notes, People?

15 MR. PERRI: No, your Honor.

16 THE COURT: Mr. Zerner?

17 MR. ZERNER: No, your Honor.

18 THE COURT: Very good. Thank you.

19 (Whereupon, the Court stood in recess while
20 awaiting a verdict.)

21 THE CLERK: Continued case on trial, People v.
22 Ray Ross. All parties are present. The jury is not
23 present.

24 THE COURT: Counsel, the Court's received a
25 third note. My law secretary has given you the

1 opportunity to review it and has read it to you. I'll
2 call the jury in now and we'll deal with it. I think
3 the easiest way to deal with it is to read Millinia's
4 testimony. You agree? Simply because the court
5 reporter cannot ensure that all the testimony pertaining
6 to conduct over the time is going to be read back.

7 MR. PERRI: Yes, your Honor.

8 MR. ZERNER: I agree. Everything will be read
9 about Millinia, direct and cross?

10 THE COURT: Yes.

11 COURT OFFICER: Jury entering.

12 (Whereupon, the jury entered the courtroom.)

13 THE CLERK: Let the record reflect the
14 presence of the jury. All parties are present.

15 Are the People ready?

16 MR. PERRI: Yes, your Honor.

17 THE CLERK: Defense ready?

18 MR. ZERNER: We are, thank you.

19 THE COURT: Very good.

20 Ladies and gentlemen of the jury, I received
21 your third note asking for Millinia's testimony,
22 specifically time frame March 1, 2013 to December 29,
23 2013 pertaining to Brooklyn and bedroom at 301 Covington
24 [sic]. TY. Thank you. And it's signed by the jury
25 foreperson.

1 We're going to break for lunch now and at 2:00
2 sharp we're going to have the court reporter read back
3 to you Millinia's testimony, both direct examination and
4 cross-examination, okay, and any redirect or recross.
5 You will get all of her testimony so that you will get
6 all of the information that you have requested in your
7 third note, okay.

8 Remember my admonitions, just forget about the
9 case. Don't talk about it among yourselves or with
10 anyone else.

11 If you hear somebody talking about it outside,
12 ignore it and then report it back to me, okay.

13 Ignore anybody associated with the trial if
14 you see them at the pizza parlor, Chinese restaurant,
15 Dunkin Donuts, wherever they may be having lunch.

16 We'll be back 2:00 sharp to continue
17 deliberations.

18 (Whereupon, the jury exited the courtroom.)

19 THE COURT: Counsel satisfied with the Court's
20 instructions on the note, People?

21 MR. PERRI: Yes, your Honor.

22 MR. ZERNER: Yes, your Honor.

23 THE COURT: Very good, thank you. See you at
24 2:00.

25 (A luncheon recess was taken.)

1 AFTERNOON SESSION

2 THE CLERK: Continued case on trial, People v.
3 Ray Ross. The jury is not present. All parties are
4 present.

5 People ready at this time?

6 MR. PERRI: Yes, your Honor.

7 THE CLERK: Is the defense ready?

8 MR. ZERNER: We are, thank you.

9 THE COURT: Okay. With regard to the two
10 notes, second and third note I believe it was, and
11 testimony, we'll have the court reporter read back
12 Millinia Johnson's testimony in full.

13 COURT OFFICER: Jury entering.

14 (Whereupon, the jury entered the courtroom.)

15 THE CLERK: Let the record reflect the
16 presence of the jury and all parties.

17 People ready?

18 MR. PERRI: Yes, your Honor.

19 THE CLERK: Defense ready?

20 MR. ZERNER: We are, your Honor, thank you.

21 THE COURT: Okay, ladies and gentlemen,
22 welcome back. We'll have the court reporter go right
23 into the reading of the testimony of Millinia Johnson.

24 (Whereupon, the requested testimony was read
25 back by the reporter.)

1 THE COURT: Kathi, can I ask you to stop for
2 one second? I need to see the attorneys in the back for
3 one second.

4 (Pause in the proceedings.)

5 THE CLERK: Court is reconvened.

6 THE COURT: Okay, ladies and gentlemen of the
7 jury, I'm going to let you take a break. We've been
8 going about an hour and the stenographer has been
9 reading for an hour, so we're going to give her a break
10 too. We'll call you right back.

11 (Whereupon, the jury exited the courtroom.)

12 THE CLERK: Continued case on trial, People v.
13 Ray Ross. The jury is not present at this time, Judge.
14 All parties are.

15 People ready?

16 MR. PERRI: Yes.

17 THE CLERK: Defense ready?

18 MR. ZERNER: We are, thank you.

19 THE COURT: Counsel, under Court Exhibit XIII,
20 the jury asked for all of Millinia's testimony. After
21 instructing the jury with regard to that inquiry with
22 the approval of counsel, the jurors then asked in
23 Exhibit XV, Court Exhibit XV for Millinia's testimony
24 specifically time framed March 1, 2013 to December 29,
25 2013 pertaining to Brooklyn and bedroom at 301, they

1 write, Covington.

2 The Court -- the jury was then called in and
3 the court reporter read back Millinia's direct
4 examination from the beginning, I believe, to a point
5 where it started to go into cell phones and at that
6 point the Court interrupted the court reporter and asked
7 for a short break to conference with counsel with regard
8 to additional read back.

9 While the Court was in conference with
10 counsel, the Court received another note from the jury
11 indicating -- on Court Exhibit XVI, indicating, We, the
12 jury, are satisfied with the read back of direct so far.
13 Can we please now hear the defense cross-examination?
14 Thank you.

15 The Court then continued its conference with
16 counsel looking for specific cross-examination testimony
17 with regard to that time frame. Quite frankly, there
18 wasn't much in that regard. The Court did find, with
19 the expertise of the court reporter, a section of
20 cross-examination testimony, page 339, approximately
21 lines four through 12, that dealt with the specified
22 time frame within which the jury was asking for in terms
23 of the cross-examination of Millinia Johnson.

24 The Court intends to have the court reporter
25 read back that particular section of cross-examination.

1 The Court and the court reporter went through the
2 computer generated transcript with fine features and
3 such and there was nothing else that the Court could
4 find that specifically dealt with that time frame.

5 That being said, I'll allow counsel to put on
6 their positions for the record. Mr. Perri.

7 MR. PERRI: Your Honor, the People support the
8 Court's interpretation of the note and its application
9 for the record.

10 THE COURT: Mr. Zerner.

11 MR. ZERNER: Your Honor, I haven't had the
12 opportunity to see Court Exhibit XVI and I respect what
13 you just put on the record, as well as Court Exhibit XV,
14 but it seems to me in Court Exhibit XV the jury says
15 that they want to hear from the complaining witness from
16 the time frame March 2013 through her birthday about
17 Brooklyn and about the bedroom.

18 Then they say in Court Exhibit XVI they are
19 satisfied with the direct. They want to hear the cross.
20 They don't say we want to hear the cross about Brooklyn
21 and the bedroom or we want to hear the cross about the
22 complaining witness from March 1, 2013 through her
23 birthday.

24 My position is let them hear everything. But
25 in the absence of letting them hear everything, earlier

1 on when we interrupted the court reporter speaking very
2 briefly, I said let them hear the whole cross and you
3 said yes, they're going to hear the whole cross.

4 THE COURT: Hold it, sir.

5 MR. ZERNER: The note we got subsequently from
6 that --

7 THE COURT: Are you talking about in chambers?

8 MR. ZERNER: No. Once the court reporter
9 started reading anything back this afternoon, there was
10 a very brief break when your Honor called Mr. Perri and
11 I towards the back and we never actually went to your
12 chambers.

13 THE COURT: Off the record, that conversation?

14 MR. ZERNER: Yes, it was an off-the-record
15 conversation, but it was interrupting the beginning of
16 the direct examination that was being read back to the
17 jury. We stepped back probably for two minutes, but the
18 whole discussion was your Honor was trying to limit, for
19 efficiency sake, for what the jury would hear with
20 regards to the read back. We talked briefly and it was
21 clear to me the entire cross would be read back to them.

22 Nothing has changed about that because the
23 subsequent note that they sent, all it said was that
24 they are satisfied with the direct and now they want to
25 hear the cross. Let them hear the whole cross.

1 THE COURT: When the Court interrupted the
2 court reporter, it was because in reading the direct
3 examination, the testimony veered off into cell phone
4 matters and that is not what the jury requested in their
5 Court Exhibit XV regarding testimony pertaining to
6 Brooklyn and the bedroom for a time frame of March 1st
7 through December 29, 2013. Thus, I interrupted the read
8 back so that we can move on to the next point in the
9 direct examination that dealt with the information
10 requested by the jury.

11 In going through the entire direct
12 examination, there was no more testimony regarding that
13 particular time frame.

14 We then, and quite frankly, the Court came
15 back in and gave the jury a formal break and sent them
16 back to the jury room while we were discussing this
17 matter and while we were discussing the matter, the
18 Court received the note number XVI which I have
19 explained to you.

20 In reviewing the cross-examination of
21 Millinia, but for that time frame, not time frame, but
22 that segment of testimony, page 339, lines four through
23 12, there is nothing else contextually that goes to this
24 specific time frame asked for by the jury.

25 MR. ZERNER: Your Honor, if that's your

1 ruling, I would simply ask that we get a clarification
2 from the jury. They said in Court Exhibit XVI they're
3 satisfied with the direct, now they want to hear the
4 cross. To give them eight lines of the cross I don't
5 think satisfies what the simple language of Court
6 Exhibit XVI says. Let them hear the cross. If we're
7 not sure, let's ask them.

8 THE COURT: Sergeant, can we have the jury
9 back?

10 MR. PERRI: For the record, your Honor, just
11 the People's position would be that since the reading of
12 the direct testimony was broken to abide by the jurors'
13 last note, before we began read backs, that that note
14 should be applied to both direct and to
15 cross-examination.

16 To read the last note without incorporating
17 and putting into the context of the second to last note
18 is fundamentally unfair to the read back.

19 THE COURT: Thank you, Mr. Perri.

20 COURT OFFICER: Jury entering.

21 (Whereupon, the jury entered the courtroom.)

22 THE CLERK: Let the record reflect the
23 presence of the jury and all parties.

24 People ready?

25 MR. PERRI: Yes, your Honor.

1 THE CLERK: Defense ready?

2 MR. ZERNER: We are, thank you.

3 THE COURT: Good afternoon, ladies and
4 gentlemen of the jury. I received your note, Court
5 Exhibit XVI dated today's date, timed 3:25 p.m. It
6 states, We, the jury, are satisfied with the read back
7 of the direct so far. Can we please now hear the
8 defense cross-examination? Thank you, your Honor.

9 That note came after your previous note,
10 Exhibit XV that asked for Millinia's testimony
11 specifically time framed March 1, 2013 to December 29,
12 2013 pertaining to Brooklyn and bedroom at 301
13 Covington. TY.

14 Ladies and gentlemen, I'm going to return you
15 back to the jury room and I'm going to ask you to send
16 me a note clarifying for the Court exactly what you want
17 to hear with regard to defense cross-examination, okay.
18 All, part, whatever it is that you are asking for,
19 please specify that for the Court. Thank you.

20 (Whereupon, the jury exited the courtroom.)

21 THE COURT: People satisfied with the Court's
22 instruction?

23 MR. PERRI: Yes, your Honor.

24 THE COURT: Mr. Zerner?

25 MR. ZERNER: Yes, your Honor.

1 THE COURT: Very good.

2 (Whereupon, the Court stood in recess while
3 awaiting a verdict.)

4 THE CLERK: All parties are present. The jury
5 is not in the courtroom at this time, Judge.

6 THE COURT: As per the instructions of the
7 Court, the jury responded with another jury note, Court
8 Exhibit XVII received at 4:10 p.m. stating, We, the
9 jury, request cross-examination of Millinia from the
10 period March 2013 to December 2013 pertaining to trips
11 to Brooklyn and the bedroom at 301 Coventry Road. Thank
12 you, your Honor.

13 The Court stands by its decision to read the
14 identified passages from the cross-examination of
15 Millinia Johnson, page 339, lines four through 12. In
16 addition, however, there is an introductory question and
17 answer, if you will, on page 336, lines 20 through 22
18 that the Court will also have the court reporter read
19 back.

20 COURT OFFICER: Jury entering.

21 (Whereupon, the jury entered the courtroom.)

22 THE CLERK: Let the record reflect the
23 presence of the jury.

24 Are the People ready?

25 MR. PERRI: Yes, your Honor.

1 THE CLERK: Defense ready?

2 MR. ZERNER: We are, thank you.

3 THE COURT: Okay, ladies and gentlemen, thank
4 you for your note. I have to read it for the record and
5 I will. We, the jury, request cross-examination of
6 Millinia from the period March 2013 to December 2013
7 pertaining to trips to Brooklyn and the bedroom at 301
8 Coventry Road. Thank you, your Honor.

9 I'll have the court reporter read those
10 passages right now.

11 (Whereupon, the requested testimony was read
12 back by the reporter.)

13 THE COURT: All right, ladies and gentlemen,
14 hopefully that answers your question as you have posed
15 it to the Court. You will be returning now to continue
16 your deliberations.

17 (Whereupon, the jury exited the courtroom to
18 continue deliberations.)

19 THE COURT: Counsel, it's about 4:18. They
20 have probably about 15, 20 minutes of continued
21 deliberations. We'll break them, as required by Court
22 rules, at approximately 4:35 or so.

23 (Whereupon, the Court stood in recess while
24 awaiting a verdict.)

25 THE CLERK: The case on trial, People v. Ray

1 Ross. All parties are present except for the jury,
2 Judge.

3 THE COURT: Just two matters before the jury
4 gets here. One is, Counsel have any objection to the
5 Court's response to the jury's last question?

6 MR. PERRI: No, your Honor.

7 THE COURT: Mr. Zerner?

8 MR. ZERNER: Not at this time, no.

9 THE COURT: Very good.

10 With regard to the alternate juror, what is
11 counsel's position? Tomorrow is Friday, by the way.
12 Let me say the Court is inclined to keep the one
13 alternate juror we have at least until tomorrow.

14 MR. PERRI: That's fine, your Honor.

15 MR. ZERNER: We'll rely on the Court's
16 discretion.

17 (Whereupon, the jury entered the courtroom.)

18 THE CLERK: The jury is present. All sides
19 present.

20 People ready?

21 MR. PERRI: Yes, your Honor.

22 THE CLERK: Defense ready?

23 MR. ZERNER: We are, thank you.

24 THE COURT: Good afternoon, ladies and
25 gentlemen of the jury. Right now I'm going to hold

1 Court in recess because it's closing time. You are not
2 sequestered, so you will be able to go home and you will
3 return again same time to begin continuing your
4 deliberations at 9:30 a.m.

5 To our alternate juror, I'm going to ask you
6 to return again tomorrow.

7 Remember my admonitions. Forget about the
8 case, quite frankly, until you come back and all 12 are
9 situated again in the jury room.

10 Don't talk about the case during recess.

11 Don't read about it.

12 Don't visit any places mentioned.

13 Don't do any research about it.

14 Report to me if anyone tries to influence you.

15 Make no decisions, determinations until you
16 have all 12 of you back in the jury room. Simply forget
17 about it until tomorrow. Thank you all. We'll see you
18 tomorrow morning.

19 (Whereupon, the jury exited the courtroom.)

20 THE COURT: Counsel, anything for the record
21 before we break?

22 MR. PERRI: No, your Honor.

23 MR. ZERNER: No, your Honor, thank you.

24 THE COURT: We are adjourned until tomorrow
25 morning. I ask you to remain for just two minutes while

1 the jury exits out of the courtroom or out of the
2 courthouse.

3 MR. PERRI: Yes, your Honor.

4 (Whereupon, the trial was adjourned to
5 February 26, 2016.)

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